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CONVEYANCER'S NOTEBOOK

AMERICAN BAR ASSOCIATION CONVENTION IN LONDON

The American Bar Association Convention in London has undoubtedly had permanent results more far-reaching than the mere friendly meeting of the corresponding professional bodies of two countries. The very size of the invasion marked it off from any similar meeting. The easy good manners of the American lawyers immediately breached the traditional reserve of the English and, at any rate for English lawyers, the world has become a little smaller still. Preconceived ideas of what Americans are really like went by the board and we found points of similarity overwhelmingly greater than points of difference. So often hosts are secretly glad to see the backs of their guests, but for many of us the American visit was far too short. Those who were responsible for the organisation of the convention are to be congratulated on their efficiency.

The Section of Real Property, Probate and Trust Law held a meeting at the Grosvenor House Hotel on July 26. Mr. Joseph Trachtman, who is one of the pioneers in America of what we call tax planning and what they call estate planning, as chairman of the section, presided. Mr. R. E. Megarry, Q.C., and Mr. Edward F. George read papers on the social control of land and the bread and butter practice of the average solicitor respectively. The meeting was packed and there were some who had to stand. After the papers had been read the meeting was thrown open to questions and became really lively. Only time stopped the flow of questions.

DEED OF COVENANTS FOR BENEFIT OF INFANT

We know that the precedent of a deed of covenant for the benefit of an infant for the maximum amount for the time being

allowed without depriving the infant's parent of the child's allowance published in Vol. 17, p. 521 (and reproduced in Potter and Monroe, *Tax Planning*, p. 38), is in widespread use. We draw attention to the provision of the Finance Act, 1957, s. 12 (3), raising the maximum amount referred to from £85 to £100, so that payments for the current year must be increased accordingly. When the Finance Bill was under discussion it was pointed out that there was no provision to deal with marginal cases so that if the child's income is a pound over the maximum the parent loses the whole of the child's allowance. We suggest that, with a view to anticipating any such change in the law, clause 4 of the precedent might be altered by a slight addition to read as follows (the words in italics indicate the amendment):—

"The amount referred to in Clause 1 hereof is the sum which by virtue of section 212 (4) of the Income Tax Act, 1952, as amended or re-enacted or any similar statutory provision for the time being in force in respect of the relevant year is the maximum amount of income to which a child may be entitled in his or her own right without the loss by his or her parent of the right to the income tax allowance commonly known as the child's allowance *or any part thereof*."

We may remind our readers that we drew attention in Vol. 20, p. 2, to the fact that the Revenue insisted on a stamp duty of 15s. instead of 10s. *Potter & Monroe* still notes the stamp duty as 10s.

Solicitors' Duty in Relation to Wills

We were rather critical of Ashworth J.'s decision in *Hall* v. *Meyrick* [1957] 2 W.L.R. 458 (see *ante*, pp. 177 and 248), and we are, therefore, pleased to note that it has been reversed by the Court of Appeal ([1957] 3 W.L.R. 273; [1957] 2 All E.R. 722). It will be remembered that the plaintiff and H. consulted the defendant solicitor to draw up wills for them in each other's favour. The judge found that there were several and not joint retainers, and at the last moment allowed the plaintiff to amend her statement of claim to allege this. The defendant objected that this was contrary to the settled rule that an amendment will not be allowed so as to allege a fresh claim in respect of a course of action which at the time of application for amendment would be statute-barred. The Court of Appeal affirmed the rule and allowed the appeal on this ground.

What is of more interest is what the court had to say (admittedly *obiter*) about the duty of solicitors. Ormerod L.J. said: "I have no doubt that it would be the clear duty of a solicitor, on being

instructed to prepare a will, to advise his client on the effect of subsequent marriage on the will if, in fact, the client told him that he was intending to get married in the near future, or even, perhaps, if the client's intention came to the knowledge of the solicitor in a less direct way, but I certainly do not accept the view that it is the duty of a solicitor to advise merely because the question of marriage has been casually, and perhaps jocularly, mentioned to the solicitor in an interview, either by a third person, as was the case here, or even by the client himself. Whether the duty would arise on such an occasion would depend, in my judgment, on the actual words used at the time and on the whole of the circumstances in which they were used, including, of course, the previous knowledge of the solicitor of the affairs and intentions of his client." "I am not," said Hodson L.J., "going to impose an extravagant standard of duty on solicitors who are making wills for their clients."

Another interesting point arising out of Ashworth J.'s judgment is whether, assuming a breach of duty by the solicitor, any damages flowed from the breach. Hodson L.J. referred to the point as difficult and left it at that. Neither of the other members of the court made any observations on it. All three judges agreed with Ashworth J. that the proper inference from the facts was that there were several retainers and not one joint retainer. The fact that one bill was sent in to the gentleman did not weigh heavily with the court. We imagine that most solicitors send the bills for the husband's and wife's wills to the husband without regarding the retainer as a joint one.

Surtax Directions

It has not been the practice to give surtax directions in the case of a trading company maintaining a rate of dividend accepted as reasonable for periods before June, 1947, even though the company's profits have since increased. In a written reply in the House of Commons on August 1, the Chancellor of the Exchequer said that he had come to the conclusion that this practice should be discontinued. In respect of accounts made up for periods ending after August 1, the Special Commissioners will make directions by reference to the statutory test, namely, that the company has failed to distribute a reasonable part of its income from all sources, having regard to the current requirements of its business and to such other requirements as may be necessary or advisable for the maintenance and development of that business (*Hansard*, H.C. Debates, Vol. 574, col. *226*).

Extension of Compulsory Registration to Leicester

The Chief Land Registrar reminds us that the Registration of Title (City of Leicester) Order, 1956 (S.I. 1956, No. 826) comes into force on October 1, 1957.

Land Registration—Berkshire, Wiltshire and Dorset

The Chief Land Registrar sends us the following notice:—

Further to relieve congestion in H.M. Land Registry, Lincoln's Inn Fields, the registers, filed plans and index maps relating to the Counties of Berkshire, Wiltshire and Dorset are being removed to Government Buildings, Forest Road, Hawkenbury, Tunbridge Wells, Kent, on October 1, 1957, where as from that date the registration of title work arising from those areas will be done.

The Hawkenbury sub-office is already dealing with the work from the County Boroughs of Hastings, Eastbourne and Oxford and the Counties of Sussex and Hampshire and it would be a great convenience if applications for registration, searches, etc., affecting titles in these areas and in those areas mentioned in the paragraph above could be sent there direct.

Personal searches of the registers and index maps may be made at Hawkenbury but where it is desired to inspect these records in London they will be made available at Lincoln's Inn Fields at short notice.

The full address of the Hawkenbury sub-office is:—

H.M. Land Registry,
Government Buildings,
Forest Road,
Hawkenbury,
Tunbridge Wells,
Kent.

Telephone No. Tunbridge Wells 2780/91.

THE RENT ACT, 1957—(2)

By Donald Keating, b.a., Barrister-at-Law
and
Christopher Priday, b.a., Barrister-at-Law

This article is concerned with dwellings which will remain under control. It deals first with alterations to the grounds for obtaining possession. There then follows a discussion of the new rent limit, its calculation and its recovery. Its adjustment and its abatement for disrepair will be dealt with later.

Alteration of Grounds for Possession

1. Landlord by Purchase

It has long been a feature of the Rent Acts that a landlord who became landlord by purchase after a certain date is debarred from relying on the ground for possession that he requires the premises for occupation as a residence for himself or certain specified members of his family (*i.e.*, paragraph (h) of the First Schedule of the 1933 Act). This date has now become November 7, 1956 (*a*), in place of a date which in most cases was before the last war (*b*). The result is that a large new class of landlords is now enabled to apply to the court for possession. Where proceedings were begun before July 6, 1957 (the commencement of the Act), on grounds other than paragraph (h) it will now, it is submitted, be open to a landlord who has ceased to be a " purchaser " to rely on paragraph (h) in the same proceedings (*c*). Theoretically the landlord need not amend his pleadings (*d*), but in practice he should give notice to the tenant that he will rely on paragraph (h) and should amend by pleading shortly that he requires the premises for occupation as a residence for himself or the specified

(*a*) Sched. VI, para. 21; s. 26 (3); Sched. VIII.

(*b*) Formerly it was December 6, 1937, for old control houses, 1938 Act, Sched. II; September 1, 1939, for new control, 1939 Act, Sched. I; February 8, 1952, for subtenancies of Crown property, 1952 Act, Sched.; and November 11, 1953, for 1954 control, 1954 Act, Sched. IV. For the special cases where this form of control applies see 1954 Act, s. 33 (6), and Sched. IV, and see Megarry, 8th ed., p. 166. Further, November 7, 1956, is now the relevant date under the analogous provision of the Third Schedule to the Landlord and Tenant Act, 1954, Part I; see 1957 Act, Sched. VI, para. 27 (2).

(*c*) *Stovin* v. *Fairbrass* (1919) 88 L.J.K.B. 1004; *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58.

(*d*) See cases cited in (*c*) and Megarry, 8th ed., p. 243.

members of his family as the case may be. The question may arise whether the judge can take into account a recent purchase, say in the summer of 1956, on the overriding question of whether or not it is reasonable to make an order. It is submitted that he can (*e*).

2. Has the Defence of Greater Hardship Gone?

The question posed is answered in the negative by one learned writer (*f*) and is assumed to be in the negative by another (*g*) and by the anonymous authors of the Government publication *The Rent Act and You* (*h*). But to the present writers' knowledge one county court judge has already expressed the view that the defence has gone while another has considered the question worthy of consideration although in neither case was it necessary to decide the point. The matter is one of great practical importance so a short discussion follows.

The relevant part of the 1957 Act is paragraph 21 of the Sixth Schedule which states:

"21. For paragraph (h) of the First Schedule to the Act of 1933 (which relates to possession without proof of alternative accommodation), the following paragraph shall be substituted—

'(h) the dwelling-house is reasonably required by the landlord who has become landlord by purchasing the dwelling-house or any interest therein after the seventh day of November, nineteen hundred and fifty-six, for occupation as a residence for—

(i) himself; or

(ii) any son or daughter of his over eighteen years of age; or

(iii) his father or mother.'"

Excluding for the moment consideration of the point in issue, paragraph (h) of the First Schedule of the 1933 Act was exactly the same as the new paragraph (h) save for the date and its punctuation, for it ended in a colon. It was then followed by a proviso which gave to the tenant the defence to a claim under paragraph (h) that greater hardship would be caused by making

(*e*) *Cf. Briddon* v. *George* [1946] 1 All E.R. 609 where it was held that recent purchase should not be taken into account in considering reasonableness in an alternative accommodation case. However, Scott L.J. in *Cumming* v. *Danson* [1942] 2 All E.R. 653, 657, suggested that the burden on the landlord in proving reasonableness is lower in an alternative accommodation case than in a case under paragraph (h). Morton L.J., in *Briddon* v. *George*, at p. 614, reserved his view on this point.

(*f*) R. E. Megarry Q.C., *The Rent Act*, 1957, at p. 34.

(*g*) Ashley Bramall, *The Rent Act*, 1957, at p. 95. See also *The Rent Acts Manual*, pp. 158, 161.

(*h*) Answer No. 64.

an order for possession than by not making an order. The question is whether the 1957 Act has repealed this proviso so that a landlord claiming possession under the new paragraph (h) need only show: (1) that he reasonably requires the premises; (2) that it is reasonable to make an order for possession.

In favour of the repeal of the proviso one can point to the full stop at the end of the word "mother" printed within the inverted commas. Previously there was a colon. Is this not intended to show that the greater hardship proviso was a proviso to paragraph (h) and has, by virtue of paragraph 21, been repealed? Further, if the only object of paragraph 21 is to substitute a different date for defining a landlord by purchase why does it substitute a whole paragraph instead of merely substituting a new date (*i*)?

Against the repeal the main argument is that the proviso is so worded and is so set out in the King's Printer's copy that it is a proviso to the Schedule and not to paragraph (h). Therefore it is unaffected by the alteration to paragraph (h). Some support, too, can be gained from the heading "Minor and Consequential Amendments" to the Sixth Schedule. The full stop must be ignored as a frolic of the printers. The substitution of the whole paragraph instead of only a date can be explained by attempting to draft words suitable to alter the date. The original paragraph read "11th July 1931"; for old control it now reads "6th December 1937" and for new control "1st September 1939." The task of substituting "November 7, 1956" neatly was probably such that the draftsman thought it easier to wipe out the paragraph and start afresh.

On the whole it is thought that the greater hardship proviso has not been repealed although the draftsman's efforts will probably give the courts some trouble before the matter is finally settled.

3. Internal Decorative Disrepair

If the tenant dissents from the landlord's election to be responsible for internal decorative repairs (see below, "The Appropriate Factor") the grounds for possession specified in paragraph (a) of the First Schedule to the 1933 Act are to have effect as if they included the ground that the tenant has failed to keep the dwelling in a reasonable state of internal decorative repair having due regard to its age, character and locality (*k*).

(*i*) *Cf.* para. 27 (2) of the 6th Schedule to the 1957 Act and note that this was the method used when altering the original date in paragraph (h) to December 6, 1937, for old control—1938 Act, 2nd Sched.; and to September 1, 1939, for new control—1939 Act, 1st Sched.

(*k*) Sched. I, para. 2 (3).

CALCULATING THE RENT LIMIT

The annual rate of the rent limit is simple in principle to calculate and it may be convenient to repeat the form of equation given in the first article.

Annual rent limit = (1956 G.V. × 2) + R + S + F. The 1956 gross value is multiplied by 2 or the other appropriate factor, and to this are added sums for rates borne by the landlord, and if necessary, for services and for furniture. The rent for the rental period (*i.e.*, a period in respect of which a payment for rent falls to be made (*l*)) is found by dividing the number of rental periods in a year into the total sum calculated as above (*m*). If the rent limit calculated in this way is less than the existing recoverable rent the latter rent remains recoverable and becomes the rent limit (*n*).

Although the principle may be simple, its application may in some cases involve some care and the consideration of the various elements which make up or affect the rent limit. They are set out below. Where matters are thought to be of rare occurrence only their nature is indicated.

1. 1956 Gross Value

The ordinary case. Gross value means the gross value shown in the valuation list on November 7, 1956 (*o*). Where the dwelling forms part only of a hereditament shown in the list the value is to be apportioned by agreement in writing between landlord and tenant or determined by the county court (*p*). If the landlord is himself a tenant the consent in writing of his immediate superior landlord is necessary to the agreement unless the landlord's tenancy is for a term with more than seven years to run (*q*).

Alteration of valuation list. If the valuation list is varied after November 6, 1956, as a result of a proposal made before April 1, 1957, or made on the ground of a change in the occupier or in the circumstances of occupation, the varied gross value replaces the original (*r*).

No gross value. Where a dwelling is or forms part of a hereditament for which no gross value was shown in the valuation list on

(*l*) s. 25 (1).
(*m*) s. 1 (1). The division involves nice arithmetic for weekly tenancies. The divisor is $52^{1}/_{7}$ in ordinary years, $52^{2}/_{7}$ in leap years. *Cf.* Note 8 of Sched. VI of the Rent Restriction Regulations, 1957.
(*n*) s. 1 (3), and see below.
(*o*) s. 25 (1).
(*p*) s. 25 (1). For a precedent of such an agreement see *post*, p. 732.
(*q*) s. 23.
(*r*) Sched. V, para. 6.

November 7, 1956, the first gross value shown in the list thereafter becomes the 1956 gross value (*s*).

Alteration due to improvement. The result of Schedule V, paragraph 8, and section 5, seems to be (*t*) that, where the valuation list is varied as the result of an improvement, the landlord cannot charge the 8 per cent. increase (see later article) for the improvement as well as having the benefit of an increase resulting from the higher gross value due to the improvement. Presumably if he has commenced charging the 8 per cent. before the valuation list is varied he must stop charging it when it is varied.

Part business premises. Where the premises are, or form part of, a hereditament the gross value of which was arrived at as a result of section 4 (3) of the Valuation for Rating Act, 1953, *i.e.*, where it is part dwelling and part business, the gross value is for the purposes of the Rent Act further reduced by four-sevenths of that part of the hereditament certified by the valuation officer to be not used wholly for the purposes of a private dwelling (*u*).

More than one hereditament. Where the premises consist of, of form part of, more than one hereditament the 1956 gross value is ascertained by what may be a complex process of aggregation of gross values (*a*). A reduction of four-sevenths is made for business premises (*b*).

Reduction for tenant's improvements. The 1956 gross value may be reduced by such amount as may be agreed or determined in accordance with the Fifth Schedule, Part III, for tenant's improvements (*c*).

2. The Appropriate Factor

To discover the appropriate factor one must use the word "repairs" as if it did not include internal decorative repairs (*d*). The factor is 2 where the tenant has no responsibility for repairs (*e*); $1\frac{1}{3}$ where the tenant is responsible for all repairs (*e*); such number between 2 and $1\frac{1}{3}$ as may be agreed in writing or determined by the county court where the tenant is responsible for some but not all repairs (*f*). The effect of this restricted meaning given to "repairs"

(*s*) Sched. V, para. 7.
(*t*) We hope our hesitancy will be appreciated upon reading the Act.
(*u*) Sched. V, para. 9.
(*a*) See Sched. V, para. 10.
(*b*) The Rating and Valuation Act, 1925, s. 68, has been applied to London by the Rating and Valuation (Miscellaneous Provisions) Act, 1955.
(*c*) See first article, *ante*, p. 264. The tenant must have started the prescribed procedure by August 17, 1957.
(*d*) Sched. I, para. 2 (1).
(*e*) s. 1 (1) and Sched. I, paras. (1) and (2).
(*f*) Sched. I, para. 1 (3).

is that the factor 2 can be used both where neither party is liable for internal decorative repairs and also where the tenant is liable. Further, $1\frac{1}{3}$ applies whether the tenant is liable for internal decorative repairs or not.

If the landlord is responsible for internal decorative repairs under the terms of the tenancy or neither the landlord nor the tenant is responsible therefor but the landlord elects to be treated as responsible for the purposes of the Act, then the figures in the last paragraph become $2\frac{1}{3}$ and $1\frac{2}{3}$ instead of 2 and $1\frac{1}{3}$ (*g*). An election is made by notice on Form F served on the tenant (*h*) and becomes effective unless within one month of service the tenant dissents in writing (*i*). It is submitted that the effect of section 2 (1) and of paragraphs 1 and 2 of the First Schedule is that, where a landlord serves notice of election, no notice of increase (see below) can be served until the tenant has dissented or the period during which he may dissent has expired. If the tenant dissents the appropriate factor is not increased by $\frac{1}{3}$ but internal decorative disrepair may be a ground for obtaining possession (*k*).

The Act does not impose any contractual obligation on the landlord to repair where the appropriate factor is more than $1\frac{1}{3}$ according to the above. Its sanction for disrepair is to reduce the appropriate factor to $1\frac{1}{3}$ where a certificate of disrepair is issued or an undertaking to repair is not carried out. This is discussed fully in a later article.

3. Addition of Rates

Rates borne by the landlord or any superior landlord can be added (*l*). The addition can ignore any discount or allowance given for payment by the owner instead of by the occupier (*m*). "Rates" includes water rents and charges but not an owner's drainage rate (*n*). If necessary an apportionment of the rateable value of a larger hereditament must be agreed in writing or determined by the county court (*o*). The amount of rates to be added are the rates for the basic rental period calculated proportionately to that period (*p*). "Basic rental period" means the rental

(*g*) *Ibid.*, para. 2 (1).
(*h*) *Ibid.*, para. 2 (2).
(*i*) *Ibid.*, para. 2 (3). The Act does not say that a prescribed form must be used, but a form (FF) is provided in the Regulations.
(*k*) See above, "Internal Decorative Disrepair."
(*l*) s. 1 (1).
(*m*) Sched. II, para. 5.
(*n*) s. 25 (1).
(*o*) Sched. V, para. 1 (b). For precedent of such an agreement, see *post*, p. 732.
(*p*) Sched. II, para. 1.

period comprising the commencement of the Act or, in the case of a controlled tenancy beginning thereafter, the first rental period of the tenancy (*q*).

4. Addition for Services and Furniture

Where appropriate there can be added to the figure for the annual rate of the rent limit such annual amount as may be agreed in writing between landlord and tenant or determined by the county court to be a reasonable charge for any services for the tenant provided by the landlord or a superior landlord during the basic rental period or any furniture which under the terms of the tenancy the tenant is entitled to use during that period (*r*). Thus the charge for services extends to those actually provided, whether contractually or not, whereas the charge for furniture is limited to that furniture which the tenant is contractually entitled to use. In each case the basic rental period, *i.e.*, normally the period comprising the commencement of the Act (*s*), must be considered. It has been pointed out (*t*) that this may lead to a strange result in that on July 7, 1957, most landlords were not providing, for example, central heating, if " provided " is given a very limited meaning. Must the landlord wait until he turns on the radiators and then seek an adjustment under section 4 (*u*), and can the tenant seek a further adjustment when they are turned off, and so on? It is thought that the court would strain against a construction which led to such an absurdity and that " provided " does not mean " actually physically provided " but " provided in the course of the tenancy current during the basic rental period."

" Services " is not defined, and it therefore appears to be a question of fact for the county court to decide what items constitute services (*a*). If at the commencement of the Act an agreement or a determination of the Rent Tribunal as to services or furniture made or given for the purposes of section 24 (3) (b) of the Housing Repairs and Rents Act, 1954, was in force it operates as an agreement or determination under the 1957 Act until such an agreement or determination is made (*b*).

(*q*) s. 25 (1). Normally a tenancy beginning after the commencement of the Act is decontrolled (see s. 11 (2)), but there are special exceptions: see proviso to s. 11 (2), s. 11 (5), s. 11 (6), and s. 20. See also Bramall, *op. cit.*, p. 59.

(*r*) s. 1 (1) (b).

(*s*) See note (*q*), above.

(*t*) By Mr. L. A. Blundell.

(*u*) See later article.

(*a*) See *R.* v. *Paddington, etc., Rent Tribunal, ex p. Perry* [1955] 3 W.L.R. 744.

(*b*) Sched. VII, para. 1. Note that s. 24 (3) (b) of the 1954 Act was confined to contractual payments for furniture or services. For general purposes that section and s. 40 (services increase) have been repealed: 1957 Act, s. 26 (3) and Sched. VIII.

5. Higher Recoverable Rent

One of the objects of the Act is to provide a new uniform method of calculating maximum rents for controlled dwellings and as a consequence the old provisions as to standard and recoverable rent have been repealed (*c*), but the old recoverable rent cannot be ignored. If for the basic rental period (*d*) the recoverable rent, either contractual or resulting from the Rent Acts as in force immediately before July 6, 1957, exceeded the rent limit as calculated above, that recoverable rent becomes the rent limit (*e*), and continues as the rent limit notwithstanding the repeals referred to until it is increased or decreased under the Act (*f*). It is subject to adjustment and reduction in the same way as the rent limit calculated according to the earlier paragraphs (*g*). In determining whether the recoverable rent is to be the rent limit any election by the landlord to carry out internal decorative repairs (see above) is treated as having been effective from the commencement of the Act (*h*).

6. Meaning of "Rent" in special cases

In special cases "rent" is to be construed so as to preserve certain existing statutory increases or deductions. Thus rent is to be construed as exclusive of: (i) any sums recoverable as rent under section 16 of the Landlord and Tenant Act, 1927, in respect of increases in taxes or fire insurance premiums for certain improvements executed by the tenant (*i*); (ii) sums recoverable by the landlord as rent for accrued tenant's repairs under the First Schedule to the Landlord and Tenant Act, 1954 (*k*). And rent is to be construed without taking into account: (i) a deduction in rent for premiums under the First Schedule to the Landlord and Tenant (Rent Control) Act, 1949 (*l*); (ii) a reduction in rent ordered by the court under paragraph 1 of the Second Schedule to the Landlord and Tenant Act, 1954, for the landlord's failure to carry out initial repairs (*m*).

(*c*) s. 26 (3) and Sched. VIII.

(*d*) For meaning see above.

(*e*) s. 1 (3). An increase which took effect before July 6, 1957, but after the beginning of the basic rental period is treated as if it had taken effect before the beginning of the basic rental period: Sched. VII, para. 4.

(*f*) s. 1 (4).

(*g*) s. 1 (3). The Housing Act, 1936, s. 167, has now been replaced by the Housing Act, 1957, s. 169 (1).

(*h*) Sched. I, para. 2 (1) (b).

(*i*) s. 25 (3) (a); Sched. VI, para. 3.

(*k*) s. 25 (3) (c); Sched. VI, para. 5.

(*l*) s. 25 (3) (c); Sched. VI, para. 5.

(*m*) s. 25 (3) (c); Sched. VI, para. 10. The application of the Act to statutory tenancies under Part I of the Landlord and Tenant Act, 1954, will be considered later, but it was thought convenient to include these references to such tenancies in this paragraph.

7. Landlord's Improvements

These can result in an increase in rent and are considered fully in a later article. It should be noted that in certain cases an increase can be charged for improvements made before the commencement of the Act (*n*). In practice, therefore, account should be taken of such an increase at the same time as the initial calculation of the rent limit.

Recovering the New Rent

The existing recoverable rent for the rental period comprising July 6, 1957, remains the rent recoverable until it is increased or reduced under the Act (*o*). But if the existing recoverable rent is less than the rent limit it can be increased to the rent limit in the manner provided by the Act (*p*). The increase can be made up to the rent limit notwithstanding anything in any Act (*p*), *e.g.*, where a rent has been fixed for a house in respect of which an improvement grant was received under the Housing Acts. That rent can be increased to the rent limit (*q*). No increase can be charged while the tenancy is still contractual except in so far as may be consistent with the terms of the tenancy (*r*).

Notice of Increase

No increase may be charged, with one exception, until a proper notice of increase has been served and the appropriate time has elapsed (*s*). The exception, where no notice is necessary, is an increase of the amount chargeable for services and furniture (*t*). Where, after a notice of increase has been served the 1956 gross value is reduced in pursuance of a proposal made before April 1, 1957, or made on the ground of a change in the occupier or in the circumstances of occupation (*u*), or is reduced as a result of tenant's improvements (*a*), the notice is not invalidated but takes effect so far as it can without causing the rent to exceed the rent limit (*b*).

(*n*) Sched. VII, para. 2 (2), (3).

(*o*) s. 1 (4)—unless a contractual tenancy provides for a reduction of rent: s. 6 (5).

(*p*) s. 2 (1).

(*q*) See also s. 20.

(*r*) s. 6 (2). For operation of notice of increase as notice to quit, see below.

(*s*) s. 1 (4); s. 2.

(*t*) s. 4 (1); see also later article.

(*u*) See above "Alteration of valuation list."

(*a*) See above "Reduction for tenant's improvements."

(*b*) Sched. V, para. 16.

Form. The notice must be in the prescribed form (*c*), or in a form substantially to the same effect (*d*). The existing provisions (*e*) for the validation of notices by the county court for error or omissions due to a bona fide mistake are applied to notices of increase under this Act (*f*).

Service. Directions as to the mode of service have been introduced by importing the provisions of section 167 of the Housing Act, 1936 (*g*). This provides for service personally or by registered letter, for service on a company and, where the owner, lessee or occupier cannot be found, for service on the premises and is applied to the service of all notices, certificates and documents required or authorised to be served under the Act (*h*).

Effect as Notice to Quit. A notice of increase served during the currency of a tenancy which could, by a notice to quit served at the same time, be brought to an end before the date or earliest date (*i*) specified in the notice of increase operates to convert the tenancy into a statutory tenancy as from that date (*k*). Thus it is effective if the date of increase is on or any time after the date for which the notice to quit would have required to be given.

Date of Increase. For an increase on account of rates the date specified may be any date not earlier than six weeks before the service of the notice (*l*), and where it is earlier than the date of notice the rent underpaid becomes due on the day after service (*l*). For an increase on account of improvements completed after July 6, 1957, the date can be any date after service (*m*). For other increases the date must be not less than three months after the service of the notice (*n*). The total of increases, other than for rates or improvements made after the commencement of the Act must not exceed 7s. 6d. in the first nine months after the service of the notice, but a notice may specify more than one date and amount (*o*). There is express provision for a two-stage increase in Form A.

Nuisance Orders, etc. Important results follow from what may be termed statutory unfitness of the premises. This phrase can be

(*c*) See Forms A, B and C, Rent Restrictions Regulations, 1957, Sched. I.
(*d*) s. 25 (1).
(*e*) 1923 Act, s. 6 (1).
(*f*) Sched. 6, para. 2.
(*g*) Sched. 6, para. 23.
(*h*) *Ibid.* For service on agents and for agent's duty to disclose identity of principal, see para. 24.
(*i*) *i.e.*, where there is a two-stage increase: see below.
(*k*) s. 6 (3).
(*l*) s. 3 (2).
(*m*) s. 5 (2).
(*n*) s. 2 (2) (a).
(*o*) s. 2 (2) (b).

summarised as follows: inclusion in a clearance area; an outstanding demolition or closing order; an outstanding nuisance or abatement notice or order; an order under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944, either unconfirmed or where less than two years have elapsed since the confirmation (*p*). If the premises are unfit in one of these ways at the time when a notice of increase is given it is of no effect, except for increases for rates and for improvements completed after July 6, 1957 (*q*). If the premises were not unfit when the notice was given but become unfit by the date when the notice was to have taken effect the increase cannot be recovered until the premises cease to be unfit (*r*). It will be observed that once a notice of increase has taken effect statutory unfitness does not of itself affect the rent limit. If the unfitness arises as the result of disrepair, as opposed to some inherent defect, it will form a good basis for an application for a certificate of disrepair (see later article).

Disrepair. Its effect on notices of increase is discussed in a later article.

Overseas Companies. Where the landlord is an overseas company, *i.e.*, a body corporate incorporated outside the United Kingdom (*r*), a notice of increase is not effective unless the provisions of Part III of the First Schedule are complied with. Broadly, these require that a certificate of repair must have been issued by the local authority except in a case where the tenant is responsible for all repairs.

Statutory Tenancies of Requisitioned Houses. Where the tenant has, by virtue of section 4 of the Requisitioned Houses and Housing (Amendment) Act, 1955, become a statutory tenant of a house formerly requisitioned, a notice of increase for any rental period beginning before April 1, 1965, is ineffective unless a copy is duly served on the appropriate local authority (*s*). Further, the local authority is a necessary party to any agreement (*e.g.*, as to 1956 gross value) and any court proceedings affecting the amount of the rent (*t*).

(*p*) See s. 2 (2) (c) for references to the statutes and sections applicable.
(*q*) s. 2 (2) (c).
(*r*) s. 2 (3).
(*s*) s. 22 (1) (a).
(*t*) s. 22 (1) (c).

RECENT LEGISLATION

1. The Occupiers' Liability Act, 1957

The Occupiers' Liability Act, 1957, makes considerable alterations in the law relating to the liability of occupiers of premises to invitees and licensees and contains certain provisions of special interest to landlords. The Act comes into force on January 1, 1958. The draftsman is to be congratulated on the refreshing simplicity of language used and it is to be hoped that we shall see more of this style.

Occupiers; visitors; premises

The Act, wisely, does not define either "occupiers" or "visitors." An occupier is one who would be treated at common law as an occupier, *i.e.*, the person in occupation or control of the premises. A "visitor" is a person who would at common law be either an invitee or licensee. The courts have got themselves in an unholy tangle over the question whether a person is an invitee or a licensee and this is the first difficulty to be resolved. A plaintiff may still wish to allege a higher standard of duty than that imposed by the Act under some contract or a defendant to set up a lower standard because the plaintiff is a trespasser, but the old distinction between licensees and invitees is now gone. The duty towards a trespasser is unaffected by the Act: he takes the land as he finds it. It is specifically provided that a person entering premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949, is not to be treated as a visitor. This appears to mean that, for the purposes of the liability of an occupier towards him, he is on the same footing as a trespasser. The exact status of the person entering premises under some right conferred by law (and possibly against the wishes of the occupier) has exercised the courts from time to time. They are specifically dealt with in section 2 (6): they are to be treated as permitted by the occupier to be on the premises for the purpose for which they are exercising their right.

The liability imposed by the Act on occupiers applies not merely to land and buildings, but to all fixed or movable structures, including vessels, vehicles and aircraft (s. 1).

The "common duty of care"

The standard of care required of an occupier is in place of the common law rules (s. 1 (1)). This standard of care, termed the "common duty of care," is "a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there" (s. 2 (2)). The Act has laid down a clear principle, consistent with the general test of negligence, and the principle is elaborated, but without imposing a straightjacket, in the two following subsections:

> "(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—
>
> (a) an occupier must be prepared for children to be less careful than adults; and
>
> (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.
>
> "(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—
>
> (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
>
> (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done."

A duty is placed on an occupier which is not too onerous, but which he cannot avoid merely by giving notice or leaving things to others. At common law the occupier could escape liability by bringing home to an invitee the risk involved: *London Graving*

Dock v. *Horton* [1951] A.C. 737; but this can involve considerable hardship in the case of a workman sent by his employer to the premises of an occupier. If premises are dangerous, in some cases a warning is sufficient, but in others it is not, for the visitor may have no practical alternative to running the risk of injury. In the case of an ordinary guest, of course, he need not enter the premises but if the occupier is to avoid liability where a warning would not be sufficient he must prove the guest's consent to run the risk.

If section 2 (4) (a) increases the occupier's burden, subparagraph (b) acts as a counterbalance, reversing *Thomson* v. *Cremin* [1956] 1 W.L.R. 103n. An owner of premises with a lift is almost certain to contract with lift engineers for its maintenance and it is unreasonable to make him liable for their bad workmanship. Assuming that the visitor cannot show something pointing to some negligence on the part of the occupier, he will not be liable, but the occupier will not escape where he has merely gone through the motions. The more complicated and dangerous the machinery, the more care he will have to use in selecting his engineers.

It is expressly provided in section 1 (1) that the common duty of care applies not merely to dangers due to the state of the premises but extends to those due to things done or omitted to be done on them, though it will be appreciated that the Act is only dealing with the liability of the occupier *qua* occupier. The duty regulates not merely personal injuries to the visitor but also damage to property, including the property of third parties (s. 1 (3) (b)), though naturally this is confined to property brought onto the premises by visitors. For example, if a guest arrives in a borrowed car which is damaged due to some unseen obstruction in the drive, the liability to the car-owner is exactly the same as if the guest had arrived in his own car.

Liability in contract

Under the rule in *Francis* v. *Cockrell* (1870) L.R. 5 Q.B. 184, 501, where an occupier of premises agrees for reward that another shall have the right to enter and use them for a mutually agreed purpose, then the contract (unless it provides to the contrary) contains an implied warranty that the premises are as safe for that purpose as reasonable care and skill on the part of anyone can make them (*Maclenan* v. *Segar* [1917] 2 K.B. 325, 332). By section 5 the common duty of care replaces this rule. The section extends to goods brought onto the premises, but it does not affect the obligations imposed on anyone under a contract for the hire of, or for the carriage for reward of persons or goods in, any

vehicle, vessel, aircraft or other means of transport, or under any contract of bailment. The higher standard of duty, that the vehicle, etc., is as fit for the purpose as reasonable care and skill on the part of anyone can make it, continues to apply.

Landlord's liability for repair

The landlord's liability in tort extended to persons lawfully using any common parts of the premises retained under the control of the landlord, for example, the staircase, lift and passages in the case of any ordinary block of flats, but, in general, he escaped liability to such persons where the injury resulted from the breach of any contractual or statutory obligation to repair premises included in any demise. The effect of section 4 is to apply the common duty of care to the latter class of case as well: where the lease or tenancy imposes an obligation on the landlord for the maintenance or repair of the premises, the landlord owes to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of damages arising from any breach of the obligation, as if he were an occupier of the premises and those persons were visitors but without any contract. The section extends to obligations of maintenance and repair imposed by statute (*e.g.*, under the Housing Act, 1936, s. 2, as amended by the Rent Act, 1957, Sched. VI, para. 22), and the obligations under a statutory tenancy or licence to occupy are treated as contractual obligations. The obligation does not, however, extend to a person entering premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949. Nor does it extend to a person who or whose goods are on the premises due solely to a use to which the tenant is putting the premises in breach of a covenant which has not been waived.

The same rule is applied to sub-tenancies. For example, if A lets premises to B under a full repairing lease and B sublets to C, B undertaking as between himself and C to do structural repairs, B owes the common duty of care to C's guest.

This section applies to leases and tenancies created before, as well as after, the commencement of the Act.

Contracting out

In general, there is nothing to prevent an occupier from contracting out of his liability (s. 2 (1)), but, where he is bound by contract to permit third parties to enter his premises, he cannot cut down the common duty of care so far as they are concerned (though he can extend his liability) (s. 3 (1)). A landlord may

equally restrict his liability in respect of the demised premises under the lease or tenancy. Finally, the landlord's liability in tort to a visitor may be met by the defence of *volenti non fit injuria* (s. 2 (5)).

The position may be illustrated by the ordinary case of a block of flats or offices let off to different tenants, the landlord retaining occupation of the roof, lift, staircase, passages and possibly other common parts. Let us also assume that the landlord has covenanted to keep the exterior and structure in repair. The landlord can exclude liability to his tenants to a greater or lesser degree: that is purely a matter of contract. It makes no difference whether the landlord's obligations are in respect of the flat or offices demised or the parts of the building retained by him.

The position of the tenant's visitors is quite different. So far as the parts retained by the landlord are concerned, the landlord cannot restrict his liability: s. 3 (1). The landlord may take on an added liability in the contract and the visitor can sue in respect of the additional liability, though such an additional liability can only be imposed, so far as third parties are concerned, by a lease or contract entered into or renewed after the commencement of the Act. This makes yet another inroad into the common law rule that only a party to a contract can sue for a breach of it. Section 3 (2), however, imposes a restrictive rule of construction: the contract, so far as third parties are concerned, does not have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable for dangers due to the faulty execution of any work of construction, maintenance, repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

The effect of these provisions is rather curious. It is common for landlords to exclude liability for injuries caused by some defect in the lift. We have never really understood why, for landlords universally insure against such liability. The landlord cannot now effectively exclude liability for his own negligence—for example, if he has been warned of a defect—so far as the tenant's family and guests are concerned, but he can still do so as far as the tenant himself is concerned.

Where a landlord retains common parts of a building, such as the roof, under his control and nothing is said about repairs, the landlord is under an obligation to the tenant to take reasonable care to remedy defects of which he has notice and which are a source of damage to the tenant. It is not settled whether this liability is contractual or delictual in nature: *Cockburn* v. *Smith* [1924] 2 K.B. 119; but the point would now appear to be of

no great importance, for, if a third party is on part of the premises retained by the landlord, he is liable under section 3, and if the third party is on part of the premises demised to a tenant, the landlord is liable under section 4.

Where a visitor is on premises let to a tenant and the landlord is in breach of his covenant to repair, the landlord is only liable to the visitor if his breach is such as to be actionable at the suit of the tenant: section 4 (4). Sometimes a lease limits the liability of the landlord but does not negative it and it would appear that in such a case the limitation does not affect the visitor.

2. Cheques Act, 1957

The principal object of the Cheques Act, 1957, which comes into force on October 17 (s. 8), is to render unnecessary the indorsement of cheques which are paid into the accounts of the payees.

Section 3 provides that an unindorsed cheque which appears to have been paid by the paying bank is evidence of the receipt by the payee of the sum payable by the cheque. In Vol. 18, at p. 101, we discussed the question of the liability of a form of receipt on the back of a cheque to stamp duty. There is little doubt that it is the auditors of companies who are responsible for insisting on the stamp, but there would appear to be no point in insisting on the stamp after the Act comes into force. If payment of an unindorsed cheque is evidence of payment to the payee, it would seem *a fortiori* that indorsement is evidence of payment. It will be noted that the section is not confined to crossed cheques, but it is difficult to believe that much weight will be attached to payment over the counter of an uncrossed cheque as evidence of payment to the payer. It is understood that the banks are discouraging the use of receipts on the backs of cheques except in very exceptional circumstances.

Protection of paying bank

By section 1, where the paying bank in good faith and in the ordinary course of business pays a cheque which is not indorsed or is irregularly indorsed, it does not incur any liability by reason only of the absence of, or irregularity in, indorsement and the cheque is deemed to have been paid in due course (*cf.* Bills of Exchange Act, 1882, s. 60). For this purpose, " cheques " include bank drafts, dividend warrants and documents in favour of " petty cash " and the like which are not strictly speaking cheques, for they are not payable either to a named person or the bearer:

North and South Insurance Corp., Ltd. v. *National Provincial Bank, Ltd.* [1936] 1 K.B. 328.

Protection of collecting bank

Where a bank gives value for, or has a lien on, a cheque payable to order which the holder delivers to it for collection without indorsing it, the bank is in exactly the same position as if the holder had indorsed the cheque in blank: s. 2. Where a banker, in good faith and without negligence, collects a cheque for a customer and the customer has no title or a defective title, the bank does not incur any liability to the true owner by reason only of having received payment. The bank is not to be treated as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, indorsement of the cheque. "Cheque" for the purpose of the section includes a bank draft, a quasi-cheque and a warrant issued by the Paymaster-General or the Queen's and Lord Treasurer's Remembrancer: s. 4 (*cf.* Bills of Exchange Act, 1882, s. 82). On the face of it, it does not matter whether the cheque is collected for the payee or not. If a cheque is drawn in favour of A or order and paid in by B, B's bank is not concerned merely because the cheque is unindorsed or irregularly indorsed, but even before the Act a bank was sometimes concerned to inquire as to the circumstances in which a third party happened to be paying in the cheque: *Lloyds Bank, Ltd.* v. *Savory* [1933] A.C. 201; and it seems probable that banks will be chary of accepting unindorsed cheques for collection except on behalf of the payees.

3. New Streets Act, 1951 (Amendment) Act, 1957

An article on the New Streets Act, 1951, appeared in Vol. 17, at p. 138. The Local Government (Miscellaneous Provisions) Act, 1953, s. 9, made a minor amendment in the calculation of the amount to be paid or secured under the Act. The new Act came into force on September 6, 1957, and makes a number of amendments to the principal Act.

Exemptions under 1951 Act, s. 1

The primary object of the principal Act was to see that as land was developed the cost of making up the street was paid or secured. Section 1 (3) contained numerous exceptions to the general rule. Section 6 (1) of the new Act adds another exception, namely, where the local authority is satisfied that (i) more than three-quarters of the aggregate length of all frontages on both sides of the street (or of a part of the street at least one hundred

yards in length and comprising the whole of the part on which the building in question will be) consists of, or is likely to consist of, the frontages of industrial premises and (ii) their powers under the appropriate private street works code are not likely to be exercised in relation to the street, or that part (as the case may be), within a reasonable time, and resolve to except the street, or that part, from section 1 of the principal Act.

A new section 1 (4) is added providing that, where, after payment or security under the principal Act, the building becomes exempt as a result of a notice or resolution of exemption under section 1 (3), the local authority shall refund the sum to the person who is for the time being owner of the land or release the security, as the case may be. If necessary, an apportionment according to frontage will be made.

Determination of liability

Section 2 of the principal Act deals with the assessment of liability. A notice is served specifying the liability and subsection (3) provided that by a subsequent notice a smaller sum could be specified. A new subsection (3) is substituted which provides that the notice shall be served on the person who is for the time being the owner of the land and intimate either a smaller or a nil assessment. A new subsection (5) is added providing that where a sum has been paid or secured in excess of the amount assessed under subsection (3), the excess shall be repaid to the owner for the time being of the land or the security released to that extent; if the security was provided by someone other than the then owner, the then owner shall be paid the excess and the local authority can enforce the security to that extent. If necessary, an apportionment according to frontage will be made.

Street works carried out privately

Section 1 provides that where a sum has been paid or secured under the principal Act and street works are subsequently carried out to the satisfaction of the local authority but not at their expense, the local authority may refund the sum or part thereof or release the security in whole or in part depending on the extent to which the local authority are satisfied that the liability of the owner of the land in respect of street works has been reduced. If the person carrying out the street works is not the owner for the time being of the land, the latter must first be notified of the intention to make the refund or release the security and afforded an opportunity of making representations to the local authority.

By section 2 where street works are carried out at private expense to the satisfaction of the local authority, the local authority may adopt the street. The power given by the section is in addition to existing statutory powers of adoption under the Public Health and Private Street Works Acts.

Section 3 provides that a local authority may enter into agreements for the making of roads under the Public Health Act, 1875, s. 146, notwithstanding the payment or security of sums under the principal Act, and the agreements may provide for the refund of the sums or part thereof with or without interest or for the release of the security in whole or in part. This section is retrospective.

Interest

Section 5 provides that sums paid under the principal Act shall bear interest at the rate fixed by the Treasury under the Public Works Loans Act, 1897, in respect of loans to local authorities for periods of ten years. The rate is ascertained as at the commencement of each financial year of the local authority.

Registration as local land charges

Section 4 provides for registration in the register of local land charges of various matters under the Acts, namely, notices of assessment served by the local authority under section 2 (1) and (3) of the principal Act; determination of the Minister on appeal under section 2 (4) against such notices; payments made and securities given under section 1; notices and resolutions of exemption under section 1 (3) (e), (f), (h) and (k); and refunds of sums paid. The necessary Order, the Local Land Charges (Amendment) Rules, 1957 (S.I. 1957, No. 1437), has been made and came into operation on September 6.

4. The Maintenance Agreements Act, 1957

By John L. M. Bowyer, Barrister-at-Law

In *Hyman* v. *Hyman* Lord Atkin said (*a*): "there is no caste in contracts. Agreements for separation are formed, construed and dissolved and to be enforced on precisely the same principles as any respectable commercial agreement." In 1929 the effect of legislation on such agreements was already noticeable, but *Hyman* v. *Hyman* itself and later decisions have made it clear that further legislative interference was needed with respect to agreements on

(*a*) [1929] A.C. 601, at p. 625.

separation or divorce made out of court between the parties to a marriage. Such legislation has been long delayed, but on July 17 last the Royal Assent was given to the Maintenance Agreements Act, 1957, which, in dealing with the anomalies of the existing law, has made far-reaching changes in this sector of the law of contract.

Void covenants: Hyman v. Hyman

The obligation of a husband to support his wife has long been recognised by common law and statute. So far as statute is concerned the material provisions for present purposes are those now embodied in sections 19 and 23 of the Matrimonial Causes Act, 1950, empowering the court to make orders for maintenance on divorce and during the continuance of a marriage respectively. The fact that these powers had been given to the court has been held sufficient to prevent the parties to a marriage from entering into private bargains, the effect of which would be to prevent recourse to the court's jurisdiction. Thus, in *Hyman* v. *Hyman* itself, it was held that an express covenant by a wife in a deed of separation not to take proceedings against her husband to allow her alimony or maintenance beyond the provision made for her by the deed will not be enforced, and that on subsequent proceedings for divorce the wife will be entitled to apply to the court for permanent maintenance. Similarly, the mere observance of a private agreement purporting to fix permanent maintenance during the subsistence of a marriage would not prevent the wife from applying to the court under section 23 on the ground of the husband's wilful neglect to provide reasonable maintenance for her. See *Tulip* v. *Tulip* (*b*), *Morton* v. *Morton* (*No. 2*) (*c*). But the jurisdiction of the court under the above provisions is strictly limited. Particular point was given to the anomalous position of cases outside the limits by a number of decisions stemming directly from the principle established in *Hyman* v. *Hyman* (*supra*), notably by the decision of the Court of Appeal in *Bennett* v. *Bennett* (*d*), and to a lesser extent by the judgments in *Tulip* v. *Tulip* and *Morton* v. *Morton* (*No. 2*) in relation to agreements for maintenance during the marriage.

Void deeds: Bennett v. Bennett

The problems presented by the *Bennett* v. *Bennett* line of cases are well known (*e*). But in order to consider the extent to which

(*b*) [1951] P. 370.
(*c*) [1954] 1 W.L.R. 737.
(*d*) [1952] 1 K.B. 249.
(*e*) See, for example, *The Conveyancer*, Vol. 17 (N.S.), p. 227.

the new Act has solved them, it is necessary to give an outline here.

Gaisberg v. *Storr* (*f*) showed that the principle in *Hyman* v. *Hyman* would invalidate *in toto* a simple contract in writing where the sole consideration for the husband's promise to pay was the wife's undertaking to forbear from applying to the court for alimony *pendente lite* or for permanent maintenance, since such consideration being void there only remained a promise by the husband unsupported by consideration. In that case no such consideration was expressed in the agreement, but one of the *rationes decidendi* of the Court of Appeal was that since the only consideration that could be inferred from the circumstances in which it was entered into was such a void undertaking by the wife, the whole agreement was *nudum pactum*. *Bennett* v. *Bennett* (*supra*) went further: for the Court of Appeal there held that a deed entered into between the parties to divorce proceedings was similarly void where the wife's promise to forbear formed substantially the whole consideration, on the ground that such a deed was contrary to public policy and could not, according to well-established principles, be enforced. The severity of this decision was to some extent tempered by the express rejection by the court of the view that the illegality of such a promise by the wife was of the same order as that which tainted agreements for immoral or criminal purposes. Thus, where a *Hyman* v. *Hyman* provision did not form the only, or substantially the only, consideration for the husband's promise, the principle of severability could apply and was, in fact, applied by the Court of Appeal in *Goodinson* v. *Goodinson* (*g*). But even with this qualification *Bennett* v. *Bennett* was disconcerting. It showed that many existing agreements were invalid, or cast doubts upon their validity, even when the precaution had been taken of making them under seal. For many of them must have been founded either in whole or in part on consideration consisting either of an express or an implied undertaking by the wife not to apply to the court. It had been common form to include such an undertaking, and indeed a precedent offending directly against the *Bennett* v. *Bennett* principle is to be found in the *Encyclopaedia of Forms and Precedents*, 3rd ed., Vol. VII, at p. 327. For the future, the decision confirmed the unwisdom, already emphasised by Denning L.J. in *Emanuel* v. *Emanuel* (*h*) and *Combe* v. *Combe* (*l*), of neglecting to apply to the court for a maintenance order in divorce proceedings, or at least to obtain the court's

(*f*) [1950] 1 K.B. 107.
(*g*) [1954] 2 Q.B. 118.
(*h*) [1946] P. 115.
(*l*) [1951] 2 K.B. 218, 222.

sanction to any agreement between the parties. And a precedent for a limited and inoffensive agreement was published in *The Conveyancer* (*m*). But the problem of agreements already in existence remained: even where it was thought that the principle of severability might apply it was not easy to advise with certainty that they would be valid, except in clear cases. In consequence a large number of divorced wives were in possession of maintenance agreements that might well not be enforceable.

Matrimonial Causes Act

The most serious possible effects of *Bennett* v. *Bennett* were not demonstrated in that case, for the issue was merely, in the words of Denning L.J. at p. 260, "whether the wife can sue upon the deed by action at law or whether her proper remedy is by application to the Divorce Court," and the decision, affirming that of Devlin J. in the court below (*n*), overruled the registrar's decision that the deed effectively precluded him from entertaining the wife's petition for maintenance, so that the practical result was to enable the wife to obtain a maintenance order from the court. In *Shott* v. *Shott* (*o*), however, the position was different. Immediately after the decision of Devlin J. in *Bennett* v. *Bennett* the wife applied to the court for maintenance on the ground that a deed made during divorce proceedings concluded eighteen years previously was invalid according to that decision. The Court of Appeal refused to allow the wife to apply for maintenance in this case. The jurisdiction conferred by section 19 (3) of the Matrimonial Causes Act, 1950, is limited to making orders for permanent maintenance "*on* any decree for divorce or nullity," and while the courts have applied these words with considerable latitude, the Court of Appeal was not prepared to allow the wife to make her application so long after the decree absolute where the husband had faithfully performed his obligations under the deed and the wife was, in effect, "crying out before she was hurt." This decision left open two important questions: where a number of years had elapsed since decree absolute would the court allow an application out of time if the husband dishonoured a *Bennett* v. *Bennett* deed, or if the provision made by such a deed was so inadequate as to leave the wife virtually without support. With regard to the first situation, Jenkins L.J. let fall certain observations in *Shott* v. *Shott*, *supra*, at p. 739, to the effect that where it was the husband who set up the invalidity of the deed, the wife's delay might not be a bar to her

(*m*) See Vol. 15 (N.S.), p. 555.
(*n*) [1951] 2 K.B. 572.
(*o*) [1952] 1 All E.R. 735.

application, as in such a case the court might exercise its discretion under the principle established in such cases as *Fisher* v. *Fisher* (*p*), that even a delay of several years might be excused in appropriate circumstances. Such *obiter dicta* as these can, however, only have provided a limited degree of comfort for those ex-wives who had reason to fear that their former husbands were likely to discontinue payments, or for the parties to such a deed in any case where the Inland Revenue may have been harsh enough to take the *Bennett* v. *Bennett* point and deny them the tax advantages of a valid deed of covenant.

Section 23 of the Matrimonial Causes Act, 1950, is, like section 19 (3), limited in time, being of its very nature restricted to applications for maintenance during the subsistence of the marriage. But it is also strictly limited in scope, since it only applies "where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the infant children of the marriage." Thus it clearly appears from the judgments in both *Tulip* v. *Tulip* and *Morton* v. *Morton* (*No. 2*), *supra*, that while a maintenance agreement on separation would not necessarily preclude an application under the section, its existence and observance were most relevant factors for the court when considering whether a husband had wilfully neglected to provide reasonable maintenance, and that in all except extreme cases proper payment by the husband under such an agreement will negative wilful neglect.

The legislature thus faced several interrelated problems. A fairly considerable class of agreements made under proper legal advice in the belief that they were binding were seen to be worth little more than the paper they were written on. The legislature's own manifest intention to ensure proper maintenance for wives and ex-wives was in danger of being thwarted. Existing legislation seemed ineffective where the parties had made and observed a private bargain, whether it constituted an enforceable agreement or not.

To meet this situation the new Act has been drafted in a simple but effective way.

The new Act

(1) *Validating provisions*

The Act, which came into force on August 17, applies to all separation agreements in writing made before or after its commencement. Subsections (1) and (2) of section 1 validate existing

(*p*) [1942] P. 101.

and future *Bennett* v. *Bennett* deeds. The material provisions of this section are as follows:—

"1.—(1) This section applies to any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being—

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements.

(2) If an agreement to which this section applies includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, that provision shall be void but any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable but, unless void or unenforceable for any other reason, and subject to the next following subsection, shall be binding on the parties to the agreement."

It seems reasonably certain that subsection (2) validates not only deeds but also agreements in writing expressed to be made in consideration of such a void provision. Statute has therefore made binding a class of agreements in writing that lack consideration. But it will be noticed that the subsection only applies to an agreement in writing that "includes a provision purporting to restrict . . . etc." Would it not have been better to say "the consideration for any of the financial provisions whereof consists in whole or part of an undertaking promise or understanding whether express or implied the effect or purpose of which is to restrict . . . etc." ? For the words actually used do not seem particularly apt to validate such an agreement as that considered in *Gaisberg* v. *Storr*, *supra*, where the undertaking by the wife to forbear from applying for a maintenance order was not expressed but merely inferred by the court. Was this agreement one which "included a provision purporting to restrict . . . etc." ? It is, of course, arguable that an agreement in writing "includes" all terms and provisions that a court of construction would imply into it by inference from the wording of the instrument and also from surrounding circumstances. But it is submitted that words such as those suggested would have fitted the *Gaisberg* v. *Storr* position better. If it should be held that *Gaisberg* v. *Storr* agreements were not validated by the Act, the curious situation would be produced

that an agreement for a void consideration is validated if that consideration is expressed, but not if it is merely to be inferred.

There are two provisos to subsection (2) above. Proviso (a) limits the operation of the section in relation to agreements that endure after the death of the party chargeable thereunder. Proviso (b) provides that the validation is not retrospective, that is to say, no claim under agreements validated by the Act can be made for arrears of payments accrued prior to August 17, 1957.

(2) *Alteration by court*

Subsection (3) provides the second, and perhaps most revolutionary, change introduced by the Act. All the agreements covered by the preceding subsections, with the exception of those made more than six months after dissolution of the marriage between the parties, are thrown open to variation by the court, provided only that both parties are domiciled or resident in England, and that there has been a sufficient change in circumstances to warrant a variation in the "financial arrangements" contained in the agreement, or to make it seem desirable that financial arrangements should be inserted in an agreement containing none. This section remedies at one stroke the deficiencies, brought out by the cases mentioned above, in the scope of the court's jurisdiction under the Matrimonial Causes Act, 1950, since it not only removes all danger that a wife may be left without provision after relying for many years on a void *Bennett* v. *Bennett* deed, but also enables the court to alter a separation agreement during marriage whenever there has been a material change in circumstances, instead of being restricted, as hitherto, to cases where the husband has wilfully neglected to provide reasonable maintenance (*q*).

How extensive this jurisdiction may be is indicated by the fact that when Lord Merthyr, who introduced the Maintenance Agreements Bill in the House of Lords, was asked what would constitute a sufficient "change in the circumstances," he replied, ". . . For example, if the value of money fell, I should say that that would be a change of circumstances" (House of Lords, May 28, 1957; *Hansard*, col. 58). With inflation apparently in constant attendance there can be few agreements not recently made in which there has not been a material change in circumstances one way or the other. Practitioners are likely, therefore, to be soon faced with a spate of potential applicants in the shape both of needy wives and of hard-pressed husbands. Nor is their task likely to be an easy one. The court's discretion is practically unlimited, wider even

(*q*) s. 2 (1).

than it is on applications under the Inheritance (Family Provision) Act, 1938, in which it is notoriously difficult to advise a client how much he may expect to get. But it may be even more difficult in cases under the new Act, in which knowledge of one of the principal factors to be taken into consideration, namely, the means of the other party, may not be available before proceedings are well under way. There will, however, probably be cases in which the commencement of proceedings is a matter of urgency: where, for instance, a potential applicant's advisers have reason to believe that the other party may leave England; or in the event of the death of the other party to an intended application under the Act for variation of an agreement which provides for the continuation of payments after his death, for no such application can be made more than six months after the general grant of representation.

A Rule of the Supreme Court will presumably assign applications under the Act to one or other Division, but the writer may perhaps be allowed to offer his humble suggestion that the Chancery Division might be an appropriate choice because of the resemblance between applications under the Maintenance Agreements Act and under the Inheritance (Family Provision) Act.

There is no express provision that payments made in pursuance of orders of the court under the Act shall, if of sufficiently small size, rank as "small maintenance payments" (*r*) not requiring deduction of tax at source (*s*) as there is, for instance, in the Affiliation Orders Act, 1952, but it is submitted that they will probably be treated as small maintenance payments within the definition in section 205 of the Income Tax Act.

(*r*) See also p. 365, *post*.
(*s*) Income Tax Act, 1952, ss. 205–207.

THE FINANCE ACT, 1957: A SUMMARY

By David R. Stanford, Barrister-at-Law

The yearly Finance Act is with us once again, but for once contains but little to increase the burden of taxation and some considerable reliefs. One is perhaps used to considering Finance Acts as a haven of obscurity and the 1957 Act will cause many headaches and much candle-burning for those whose task it is to translate its language into practice. The hardest task is probably laid upon the long-suffering band of men who receive such little praise and yet administer our taxation system in a manner of which the country may be proud. The following summary is mainly concerned with the general changes in income tax, surtax and estate duty as it affects the individual, though other provisions are briefly noted.

Customs and Excise

The opening gambit is a good one, for by section 1 we find entertainments duty disappearing, save in respect of cinematograph shows or television shows either unadulterated or mingled with other "entertainments," provided they are not merely ancillary to lectures or exhibitions. The First Schedule (*a*) grants exemption to the educational or charitable entertainment, subject to conditions, and to entertainments given in rural areas to small audiences. A flat rate of duty is decreed, thus dispensing with some of the previous complexities (*b*). This gay mood is, however, immediately chastened by section 2, which imposes the well-publicised excise duty of £1 on television licences. The standard rate of "television duty" is to be £1 but the amount leviable is varied in certain circumstances: it is to be collected and where appropriate refunded through the Post Office (*c*). Entertainment in the home having suffered twice already, the expense of cooling one's rage by alcoholic refreshment is kept up by the continuation of expiring duties on hops and hop products including beer (*d*). The new Australian Trade Agreement made on February 26, 1957, is sanctioned by section 4. Next, by section 5, the Treasury is given power by statutory instrument to bring into force the Second Schedule, which contains simplification of the calculations relating to certain duties on composite goods containing a dutiable part or ingredient.

(*a*) Finance Act, 1957, s. 1 (6).
(*b*) *Ibid.*, s. 1 (2).
(*c*) *Ibid.*, s. 2 (8).
(*d*) *Ibid.*, s. 3.

Section 6 removes the anomaly otherwise arising pursuant to the Second Schedule being brought into operation, whereby new preference regulations, which would need to be brought in applicable to protective duties under the 1933 Finance Act and Revenue duties under the 1919 Finance Act, would be as to the latter subject to annulment by resolution of either House of Parliament, but not as to the former. The Vehicles (Excise) Act, 1949, s. 27 (1), is then amended to include within the definition of "tower wagon" an expanding or extensible contrivance, and not only a telescopic contrivance, designed for facilitating the erection, inspection, repair or maintenance of overhead structures or equipment (*e*).

Purchase Tax

The Provisional Collection of Taxes Act, 1913, is to apply to purchase tax in addition to duties of customs and excise and income tax (*f*). Our home dweller mournfully watching the television and sipping his expensive beer may take heart from the halving of purchase tax on floor coverings, rugs, furniture, hardware, ironmongery, turnery, table-ware, kitchen-ware, toilet-ware, domestic apparatus not operated by gas or electricity and cutlery, though non-electric sewing machines are included in the 30 per cent. rate (*g*). All this, however, is as usual subject to any Treasury Order under the Finance Act, 1948, s. 21 (*h*).

Income Tax (General Provisions)

Part III starts off in a neutral fashion, leaving the standard rate of income tax at 8s. 6d. in the pound (*i*) and surtax for individuals whose total income exceeds £2,000 at the same rates as heretofore (*k*). Section 12, however, continues the good work begun by section 1 and relieves the taxpayer by increasing the benefit directly or indirectly of some personal allowances, the allowances affected being (a) earned income, (b) old age relief, and (c) child allowance. A further relief by way of exemption from tax for persons over 65 with small incomes is introduced by section 13. These four reliefs are considered in turn below under the appropriate headings. Section 14 gives a modified right to make a deduction from total income for surtax purposes in respect of certain of the personal reliefs and allowances, and this again is dealt with at greater length below.

An "industrial building or structure" for the purpose of Chapter I of Part X of the Income Tax Act, 1952, is to include,

(*e*) *Ibid.*, s. 7.
(*f*) *Ibid.*, s. 9.
(*g*) *Ibid.*, s. 8 (1).
(*h*) *Ibid.*, s. 8 (3).
(*i*) *Ibid.*, s. 10.
(*k*) *Ibid.*, s. 11.

where expenditure is to be treated as incurred after July 31, 1957, a building or structure in use for the purpose of a bridge undertaking (*l*). As a foretaste of the provisions contained in Part IV of the Act relating to overseas trade corporations, section 15 is designed to assist our overseas trade by doubling the investment allowance in respect of expenditure on the provision of a ship. Thus, in respect of expenditure treated as incurred after April 9, 1957 (unless it is so treated by reason only of the trade being commenced after that date), the investment allowance will be 40 per cent. for a ship as against the previous 20 per cent. (*m*). Section 16 is designed to deal with the question of tax avoidance, whereby an initial or investment allowance might be obtained twice over in the case where machinery or plant is ordered and part paid for by one firm and yet on completion is delivered to another firm which takes such delivery at full cost and uses the plant or machinery. Both firms might previously have obtained the full allowance. Now, no initial or investment allowance is to be made to any person, for any year of assessment, in respect of expenditure incurred in the provision of machinery or plant, unless, in consequence of his incurring it, the machinery or plant belongs to him at some time during his basis period for that year of assessment. It will be treated as belonging to a person who has incurred capital expenditure on its provision under a contract providing that he shall or may become the owner on the performance of the contract, so long as he has the benefit of the contract, but if he ceases to have the benefit, then the Third Schedule and the rules therein are brought into operation. The section is retrospective and is deemed always to have had effect, but no determination prior to April 9, 1957, can be reopened and no claim before that date, or appeal lodged before that date, is to be affected by the section.

The existing rule for the assessment of the landlord to Schedule A tax in respect of a block of flats which nevertheless constitutes "a house," as confirmed in the recent decision in *Gatehouse* v. *Vise* [1957] 2 W.L.R. 672, is altered by section 17 (see heading "Schedule A Tax" below). Section 19 contains provisions ensuring that in Scotland and Northern Ireland the alteration of rates by the removal in the former of owners' rates and the revaluation in the latter will not have the effect of increasing Schedule A liability, it being considered that fluctuation in such liability should take place, if at all, simultaneously throughout the United Kingdom.

The relief from tax given to members of the House of Commons

(*l*) Income Tax Act, 1952, s. 271 (1), as amended by Finance Act, 1957, s. 17.
(*m*) Finance Act, 1952, s. 16 (3); Finance Act, 1956, s. 15 (2).

in respect of contributions to the House of Commons Members' Fund by section 13 of last year's Finance Act is met by section 20 of the new Act, which subjects periodical payments out of that fund to tax under Schedule E. Thus, like pensions under private schemes, the contributions rank for tax relief whilst the pensions are taxed as earned income. Section 22 grants some tax exemption to banks or their issue departments resident outside the United Kingdom and being entrusted by the Government of any territory outside the United Kingdom with the custody of the principal foreign exchange resources of that territory, if designated by Order in Council. The exemption is from tax under Schedule C on their income which comprises dividends paid out of the public revenue of the United Kingdom, the object being to induce colonial territories gaining independence to keep their currency reserves in sterling in this country.

Finally, the complexity of the law relating to small maintenance payments under the Income Tax Act, 1952, s. 205, is reduced (see heading "Small Maintenance Payments" below).

Earned income (n) relief

The present earned income relief is a deduction of tax equal to the standard rate on two-ninths of earned income, or £450 (two-ninths of £2,025), whichever is the less (*o*). This is to be increased to two-ninths of earned income up to £890 (two-ninths of £4,005) *plus* one-ninth of any income above £4,005 up to a further £660 (one-ninth of £5,940) (*p*). Another way of looking at it is that an individual will get earned income relief of one-ninth of earned income so long as that income does not exceed £9,945 and an additional one-ninth of his earned income on his income under £4,005.

Old age relief

This relief is claimable where the claimant or his wife living with him was over 65 at any time of the year of assessment in question. In such a case, where his total income was not more than £600, he was entitled to a deduction of tax equal to the standard rate on two-ninths of that income (*q*) as an alternative to earned income relief (*r*). The limit of £600 is now raised to £700 (*s*). Marginal

(*n*) "Earned income" defined: Income Tax Act, 1952, s. 525.
(*o*) Income Tax Act, 1952, s. 211 (1), as amended by Finance Act, 1952, s. 14 (5).
(*p*) Finance Act, 1957, s. 12 (1).
(*q*) Income Tax Act, 1952, s. 211 (2), as amended by Finance Act, 1952, s. 14 (5), and Finance Act, 1953, s. 14 (1).
(*r*) Income Tax Act, 1952, s. 211 (4).
(*s*) Finance Act, 1957, s. 12 (2).

relief for total incomes slightly in excess of the limit is retained with reference to the new limit unaltered in its operation. Where total income was slightly in excess of £600 (and now where slightly in excess of £700), the taxpayer could claim that his tax liability be reduced to the tax he would have paid had his total income been £600 (now £700) *plus* three-fifths of the excess of his total income over £600 (now £700) (*t*). The calculation of marginal relief is thus unchanged, save for the higher figures to be used. Where, however, the total income is less than £500, the new relief granted under the Finance Act, 1957, s. 13, considered below, should be looked at.

Child allowance

Another simple but valuable reduction in taxation is the increase in the child allowance. This allowance is given to a taxpayer who proves that he has living at any time within the year of assessment any child under the age of sixteen years or, if over the age of sixteen years at the commencement of that year, receiving full-time education or undergoing training for a trade, profession or vocation (*u*). A person who has custody of such a child and maintains the child may also claim the allowance if nobody else is entitled to it (*a*). Where two or more persons are entitled to the allowance, then it will be apportioned between them as they agree, or, in default of agreement, in proportion to the amount or value of the provision made by them respectively for the child (*b*).

Immediately prior to this Finance Act, the allowance was a deduction from the amount of income tax with which the claimant was chargeable equal to tax at the standard rate on £100 having been raised from £85 by the 1955 Finance Act. This latter Act had, however, left the limit at which the child's own earnings cancelled the relief at £85, namely, if the child was entitled in his own right to an income less than £85 the whole relief was granted, but if such income exceeded £85, the whole relief was withdrawn. The Finance Act, 1957, has left the main structure of the relief unchanged and the anticipated provision for a graduated rate according to the child's income has not materialised. The limit of the child's earnings has been raised to £100 and that is now the figure beneath which the child's earnings must stay in order that

(*t*) Income Tax Act, 1952, s. 211 (3), as amended by Finance Act, 1953, s. 14 (1), and Finance Act, 1955, s. 2 (4), and as now amended by Finance Act, 1957, s. 12 (2).

(*u*) Income Tax Act, 1952, s. 212 (1) and (3), as amended by Finance Act, 1955, s. 2 (1) and (5). Child includes a stepchild and an illegitimate child.

(*a*) Income Tax Act, 1952, s. 212 (2).

(*b*) *Ibid.*, s. 213.

the relief can be claimed and above which the whole relief is lost (*c*). The amount of the relief is, however, to be a graduated rate (*d*) according to the child's age at *the commencement* of the relevant year of assessment. For a child under eleven, the relief remains unchanged at standard rate tax on £100. If the claimant shows the child to have been eleven or over at such commencement, then the relief is to be standard rate tax on £125; if he shows the child to have been sixteen or over, this relief is to be standard rate tax on £150. It should be noted that it is up to the claimants to prove the age of the child, or if he fails to prove that the child has reached eleven or sixteen, as the case may be, the relief remains at standard rate tax on £100.

The extension of this relief is of particular importance to the surtax payer, for, as will be seen below, the relief forms the basis of a deduction from total income for surtax purposes, starting with the charge for the year 1956–1957 (*e*).

New old age exemption

The new relief from tax is granted by section 13, which section is to take effect as if it were inserted in the Income Tax Act, 1952, between sections 209 and 210 thereof, and thus forms one section of Part VIII of that Act. The effect of such inclusion renders the relief subject to provisions applicable to all reliefs under the said Part VIII and in particular the ban or reduction of amount in the case of non-residence (*f*) and the withdrawal of relief in the case of income, the tax on which the claimant is entitled to deduct out of any payment to another (*g*).

A claimant who proves that *at any time within* the year of assessment either he or his wife living with him was at the age of sixty-five years or over, and that his total income does not exceed £250, will be exempt from income tax. Alternatively, if he is a married man whose wife is living with him or is wholly maintained by him during the year of assessment (he not being entitled in computing his income for income tax purposes to make any deduction for sums paid for the maintenance of his wife), he will be exempt from income tax if his total income does not exceed £400. However, if his wife is not living with him, although maintained by him, he must qualify as to age himself, and her age

(*c*) Finance Act, 1957, s. 12 (4).
(*d*) Income Tax Act, 1952, s. 212, as amended by Finance Act, 1957, s. 12 (3), granting relief up to the " appropriate amount for the child ", which phrase is defined by a new subsection (1A) inserted in s. 212.
(*e*) Finance Act, 1957, s. 14.
(*f*) Income Tax Act, 1952, s. 227.
(*g*) *Ibid.*, s. 221.

is immaterial. It should be noted that the relief is restricted to exemption from tax in respect of the relevant person whose income is less than £250 or £400, as the case may be, and is not a relief on the first £250 or £400 of total income.

Marginal relief is granted where the old age exemption described above is not qualified for by reason only that the income exceeds the relevant limit of £250 or £400, as the case may be, by less than £50. In either case, the tax payable by the claimant is to be either the tax payable without the exemption or one half of the excess over the relevant limit, whichever is the less.

Reliefs and Allowances—Surtax

A new departure in the realm of surtax is brought about by section 14. The avowed object of this relief is to assist the married man, or man with responsibilities, and if this is kept in mind the scheme of relief is reasonably straightforward. A surtax payer, for the year 1956–1957 and any subsequent years of assessment, may claim a reduction in his total income for the purpose of the charge thereon to surtax by reference to certain of the personal reliefs allowed against income tax. Each of the reliefs concerned so far as allowed against income tax is given by a reduction of tax chargeable by a sum equal to tax at the standard rate on a particular amount. Total income for surtax purposes is to be reduced by that particular amount in the case of each applicable relief. The reliefs concerned are as follows:—

(i) Married and single personal reliefs, being tax on £240 if the claimant is married and has his wife living with him, or is wholly maintaining his wife (he not being entitled in computing his income for income tax purposes to make any deduction for sums paid for the maintenance of his wife) or tax on £140 in any other case (*h*).

(ii) Child allowance, which has been explained above, being tax on £100, £125 or £150, according to whether the child at the commencement of the year of assessment is under eleven, eleven or over or sixteen or over (*i*), but in the case of surtax for the year 1956–1957, tax on £100 in all cases.

(iii) Relief in respect of a housekeeper or person looking after the child of a widower, being a female relative of the widower or his deceased wife, residing with him, or an employee, which relief is at present tax on £60 (*k*).

(*h*) Income Tax Act, 1952, s. 210, as amended by Finance Act, 1955, s. 2 (3).
(*i*) Income Tax Act, 1952, s. 212, as amended by Finance Act, 1957, s. 12 (3).
(*k*) Income Tax Act, 1952, s. 214, as amended by Finance Act, 1957, s. 14 (3).

(iv) Relief in respect of a female relative living with the claimant to look after his brother or sister in respect of whom child relief is allowed, which relief is at present tax on £60 (*l*).

(v) Dependent relative relief, granted to a claimant who maintains an incapacitated relative of himself or his wife, or his or his wife's widowed mother, where the total income of the person concerned does not exceed £165 per annum, which relief is at present tax on £60, reducible if there is more than one claimant, or if the dependant's income exceeds £105 per annum (*m*).

(vi) Relief in respect of a daughter resident with or maintained by the claimant upon whose services the claimant is dependent by reason of old age or infirmity, which relief is at present tax on £40 (*n*).

(vii) Relief in respect of a female person resident with and employed and maintained by the claimant, not claimable if any of the above reliefs are claimed in respect of that person, to look after a child in respect of which child allowance is claimable, which relief is at present tax on £60, apportionable if there is more than one claimant (*o*).

The aggregate of the amounts under such of these reliefs, tax on which at the standard rate the claimant would be entitled to deduct from the income tax chargeable on him, may, subject to one deduction, be subtracted from his total income prior to the charge to surtax. The one deduction is the amount of the personal allowance under the Income Tax Act, 1952, s. 210, of a single person, namely, at present, £140. In reducing the allowable reliefs by the amount of the bachelor or spinster's personal allowance, it is ensured first that the unmarried person with no responsibilities will gain nothing by the new relief from surtax, and secondly, that the married person or unmarried person with responsibilities will gain relief only to the extent that the additional responsibilities are recognised for income tax purposes.

Put briefly, the surtax payer will ascertain the total amount of tax on which at the standard rate he is entitled to deduct from his income in respect of the reliefs mentioned above, reduce that total by £140, and the resultant figure is that which he may deduct from his total income for surtax purposes.

(*l*) Income Tax Act, 1952, s. 215, as amended by Finance Act, 1957, s. 14 (3).
(*m*) Income Tax Act, 1952, s. 216, as amended by Finance Act, 1953, s. 14 (3), and Finance Act, 1955, s. 2 (6).
(*n*) Income Tax Act, 1952, s. 217, as amended by Finance Act, 1953, s. 14 (4).
(*o*) Income Tax Act, 1952, s. 218, as amended by Finance Act, 1953, s. 14 (3).

The special position of non-residents and spouses who have elected to be separately assessed is covered in the following manner. In the case of such non-residents as are entitled to any of the personal reliefs against income tax, namely, those non-residents specified in the Income Tax Act, 1952 s. 227 (2), the amount of the relief is reduced according to that subsection by the ratio of their income liable to United Kingdom income tax (but not surtax) to their total income from all sources, including income not subject to United Kingdom income tax (usually referred to as "world income"). In similar manner the amount of the deduction now allowed for surtax is to be reduced by the fraction $\frac{\text{Income liable to U.K. tax}}{\text{World Income}}$. Where husband and wife have elected for separate assessment under the Income Tax Act, 1952, s. 355 or 356 (*p*), then the deduction from total income for surtax purposes on account of personal reliefs will be split between them, but the total amount of the deduction will remain the same as it would under a joint assessment. The reduction of their respective incomes will be the amount of the reduction allowed on a joint assessment divided rateably between them according to their total incomes, save that the reliefs on account of maintenance of a child of which one only has the custody, dependent relative relief and relief in respect of the services of a daughter (*q*) will be wholly credited to the husband or wife as the case may be, depending upon which of them maintains the child, relative or daughter in respect of whom the relief is given. If, however, on such a division of the amount of the relief the total income of either husband or wife would be thereby totally exhausted, the unused relief will be granted to the other of them.

Schedule A tax

Section 18 reverses in part the decision in *Gatehouse* v. *Vise* [1957] 2 W.L.R. 672 (*r*). By that decision, where a block of flats constituted "a house" and not a number of separate houses, for the purpose of charge to Schedule A tax, that tax was exigible from the landlord and not from the tenants of the individual flats, if he was the common landlord of all the flats. Where, as is common in these days, the flats have been "sold" by the taking of a high premium and a nominal rent, the amount of the assessment may well exceed the rent, and thus the tax could not be "passed on" to the landlord if assessment was made on the

(*p*) Finance Act, 1957, s. 14 (2).
(*q*) Income Tax Act, 1952, ss. 212 (2), 216 and 217, respectively.
(*r*) Following *Att.-Gen.* v. *Mutual Tontine Westminster Chambers Association, Ltd.* (1876) 1 Ex.D. 469.

tenant. This decision followed the much older case of *Att.-Gen.* v. *Mutual Tontine Westminster Chambers Association, Ltd.* (1876) 1 Ex. D. 469, and showed that the Revenue practice of assessing the tenant despite the latter case, was wrong. The landlord was assessable under the Income Tax Act, 1952, s. 109 (1) (c), so the Court of Appeal held, and not the tenant under section 113 of that Act. Two members of the court thought the position anomalous and, the Government being of like mind, section 18 now provides that where a distinct part of a house or building is separately occupied by a tenant of the landlord of the entire house or building, that part *may be* treated as a distinct house or building. For this purpose the occupation of the subtenants of the tenant is to be treated as occupation of the tenant.

Thus, it appears that the Commissioners are given an option to assess the landlord under the Income Tax Act, 1952, s. 109 (1) (c), or the tenant under section 113 of that Act. If, however, the landlord is assessed, and on his appeal shows that the tenant holds that part from the landlord under a letting for a year or more either rent free or at an amount less than the Schedule A assessment for that part as reduced for collection, he can insist on the tenant being assessed. If, apart from the new section, the landlord would have been assessed in respect of the whole house under section 109 (1) (c), then he will be so assessed in respect of any part not treated as a distinct house by virtue of the new provisions.

Small maintenance payments

Small maintenance payments are payments which, although annual payments normally payable subject to the deduction of tax, are to be paid in full, deducted from the taxpayer's income for income tax purposes, and charged to tax as income of the payee (*s*). They are payments under an order of the court in the United Kingdom to or for the benefit of a woman for her maintenance, or to any person for the benefit of, or for the maintenance or education of, a person under the age of twenty-one in some cases, and sixteen in others (*t*). These payments must, in the case of a woman as payee, be at a weekly rate not exceeding £5 in some cases and £2 in others, or in the case of a payee taking on behalf of an infant at a weekly rate not exceeding 30s. in some cases and £1 in others (*u*). The distinction as to ages and amounts has no particular merit and in general depends upon the relevant court

(*s*) Income Tax Act, 1952, s. 206.
(*t*) *Ibid.*, s. 205 (1) and (2).
(*u*) *Ibid.*, s. 205 (3).

making the order. In consequence, by section 21 (1) the age of twenty-one is made uniform and the alternative amounts are abolished, the weekly rates to be in all cases not exceeding £5 in the case of a woman payee and, where a person taking as payee on behalf of an infant is concerned, in all cases not exceeding 30s.

By the transitional provisions, payments under orders made before August 4, 1957, will not be affected before April 6, 1958, unless the order is varied or revived after August 4, 1957, in which case payments after variation or revival will be affected (*a*).

Estate Duty

That there are only two sections dealing with estate duty and no relevant schedules is somewhat misleading, for section 38, making certain alterations in the provisions relating to the ascertainment of what property is dutiable when duty becomes payable pursuant to a gift *inter vivos* or the disposition or determination of limited interests, contains eighteen subsections of considerable complexity. Section 39 removes two anomalies in the exaction of duty in respect of widows' and dependants' annuities under the retirement annuity provisions introduced last year. The contract for an annuity or the annuity itself provided pursuant to section 22 of the Finance Act, 1956, if payable to a widow, widower or other dependant of the deceased, was deemed by section 35 of that Act to be a life insurance in which the deceased never had an interest, and hence not aggregable with the remainder of his estate for duty purposes, although possibly aggregable with other life insurances, by virtue of the Finance Act, 1954, s. 33 (2). This beneficial treatment of an annuity under a contract approved under section 22 of the Finance Act, 1956, is now extended to annuities payable under a trust scheme approved under the same section (*b*). Further, where under the terms of the contract or scheme the annuity might at the deceased's option have been converted into a lump sum payable to his own personal representatives but he did not exercise that option, he will not be treated as having been "competent to dispose" of that lump sum, thus causing it to be dutiable under Finance Act, 1894, s. 2 (1) (a), and aggregable with the remainder of his estate (*c*).

Gifts inter vivos: reason for the changes

Section 38, apart from subsection (11) thereof, has been passed in an attempt to stop avoidance of estate duty by legal means. The

(*a*) Finance Act, 1957, s. 21 (2).
(*b*) *Ibid.*, s. 39 (1).
(*c*) *Ibid.*, s. 39 (2).

methods involved are those which take advantage of two factors, namely, the identity of the property which is dutiable and the date at which it is valued. Clearly, if the property dutiable under the charging sections is no longer in existence, or is much reduced in value, the estate duty leviable is ousted or reduced in amount.

Certain of the methods of avoiding tax which it seeks to counter are methods which have been proved to be efficacious. This was the case with the gift consisting of shares to which a bonus issue was expected to accrue. The shares being given and the bonus issue being made, after the shares donated became the property of the donee, it was shown in *Att.-Gen.* v. *Oldham* [1940] 2 K.B. 285 (*d*) that the bonus shares were not dutiable on the death of the donor even though that occurred within five years of the original gift, for they were not part of the " property taken " on the gift being made. Hence the original shares given, valued at the date of death, are the only property bearing duty on the death occurring within five years of the gift, and such value was reduced by the issue of bonus shares having taken place. Although the use of this series of transactions to mitigate the duty on a death within five years of a gift was less widely used than its simplicity would lead one to suspect, due to the threat of the estate duty office applying the provisions of section 46 of the Finance Act, 1940, on the death to recover the lost tax (rather than adopting their usual practice of withholding their hands and ignoring the dictates of the legislature) this latter threat was in many cases an oversized damp squib. This method of mitigating tax which has been of proved validity for some seventeen years, was not, of course, the sole reason for the changes now brought in, although the beneficial effect of that type of transaction is eliminated. Further methods of mitigating the tax payable on the death of a donor within five years of his gift (or thereafter if he has retained the benefit) appeared pursuant to the publicity given to a dictum of Lord Sands in *Strathcona* v. *I. R. C.*, 1929 S.C. 800, by the recent decision in *Sneddon* v. *Lord Advocate* [1954] A.C. 257.

These decisions established the fact that where property given, whether by outright gift or by way of settlement (*e*) nevertheless proved dutiable on the death of a donor, it was the " property taken " on the gift, namely, the property actually handed by the donor to the donee or trustees, that was the subject-matter of the charge to duty and not any other property into which it was subsequently converted. Lord Sands instanced the case of a racehorse

(*d*) Affirming [1940] 1 K.B. 499.
(*e*) See also *Att.-Gen. for Ontario* v. *National Trust Co., Ltd.* [1931] A.C. 818.

given which predeceased the donor and expressed the opinion that the property given having disappeared by the death of the racehorse, nothing remained to be valued at the donor's death and hence no duty was exigible. Although this was merely an obiter dictum there is little reason to doubt that if the property taken on the gift is in fact destroyed or rendered of no value, duty would be avoided on the death of the donor.

To avoid duty and yet retain the property it was essential to find methods by which the property would be destroyed after the gift (and hence the duty avoided) and yet the donee retain benefit. This it was sought to achieve in various ways. The most common example was the gift of a short-dated security which disappeared on redemption, thus leaving open the claim that the stock no longer in existence could not be traced into the money received. Other examples are the gift of redeemable debentures subsequently redeemed and the benefit of agreements subsequently performed. The former of these two examples was conceded by the Crown (though not relevant to the decision) as capable of destroying the claim to duty in *Re Iveagh's Trusts, Iveagh* v. *I. R. C.* [1954] 1 Ch. 364, a case which established a similar principle to that now under consideration where a determination or disposition of a limited interest leaves the property in which the interest subsisted dutiable on the death (causing the interest to cease) occurring within five years (*f*). Here again, if the property in which the interest subsisted has disappeared, for example by redemption, there can apparently be no charge.

It must be emphasised that these latter methods of avoiding duty on a gift or determination or disposition of a limited interest have never been effectively tested before the courts. Where the property given is in fact destroyed and not replaced, as in Lord Sands' example of the racehorse, then probably no duty is payable. Where, however, the property was replaced, say, by redemption moneys, the situation was by no means so clear, for although the definition of "property" in the Finance Act, 1894, s. 22 (1) (f), could not be called in aid, the identification of the original debentures with the redemption moneys might be effected without the aid of any wide definition of property. This point is stressed in view of the most unusual decision of the legislature at the last moment to give a right to persons who have effected gifts in the manner thought to be effective to avoid the estate duty charge prior to the publication of the Finance Bill, to escape the effect of its provisions.

(*f*) See also *Re Joynson's Will Trusts, Gadden* v. *I. R. C.* [1954] 1 Ch. 567.

The Government, evidently considering that the widespread use of the above methods of tax avoidance should be stopped, and fearing that the Crown would not succeed in taking duty from gifts made of property which ceased to exist in its original form prior to the date of death, has caused the whole method of ascertaining the dutiable property to be changed as set forth below, and the relevant date for valuation to be determined, in some cases, at a time other than death. The conditions upon which the property which has been the subject-matter of a gift *inter vivos* or in which a limited interest existed, which has been determined or disposed of, is liable for duty on the death of the donor or person entitled to the limited interest have not been altered. Subsection (11) of section 38, which as mentioned above is not part of that scheme of change, must, however, be dealt with first.

Gifts of just over £500

By section 33 of the Finance Act, 1949, gifts otherwise dutiable under the Finance Act, 1894, s. 2 (1) (c), are exempted from duty provided that in the case of any donee they do not exceed £500. It must, however, be shown that the property taken did not include an interest in settled property and that bona fide possession and enjoyment of the property taken was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise. There has been no marginal provision, and exceeding the limit of £500 by howsoever little caused loss of the relief. Now, by section 38 (11) of the new Act, which takes effect in respect of any death after the Act came into force, irrespective of the date when the gift was made (*g*), if the aggregate amount or value of the gifts to one donee exceed £500 but otherwise relief would have been received under the Finance Act, 1949, s. 33, then the duty will be reduced to the amount of the excess over £500. Any reduction which may prove appropriate under this subsection will not affect any reduction of duty on other property by lack of aggregation of settled property (*h*), or marginal relief on the rates of duty (*i*).

Gifts affected by new legislation

Although the new legislation as to the property dutiable pursuant to gifts was originally to follow the normal pattern and to apply to all deaths after the Act, irrespective of when the relevant

(*g*) Finance Act, 1957, s. 38 (17).
(*h*) Finance Act, 1894, s. 16 (3), as substituted by the Finance Act, 1954, s. 33.
(*i*) Finance Act, 1914, s. 13.

gift, disposition or determination was made, effected or suffered (*k*), the Government gave way to pressure and has granted a right in certain cases where the death occurs after the Act to opt to pay duty on the rules previously prevailing. The reason for their so doing was apparently that the persons to suffer where the new rules were harsher would have been the donees and not the donors, and secondly that persons, having organised their affairs on the law as it stands, should not be prejudiced by new rules. This new departure in sympathy by the legislature is, it is submitted, unfortunate for two reasons. First, it would appear to encourage persons to take advantage speedily of any "loophole" which appears in existing legislation, a practice the legislature can hardly wish to encourage. Secondly, where the "loophole" as in the present case is a doubtful one, it encourages risks to be taken for it renders it far less likely that the Revenue will seek to contest the doubtful claim for exemption in the courts, the matter being closed for the future. Far more important, however, is the uncertainty which enters into the picture, which is a matter of distress to the professional adviser. Anyone advising on estate duty matters prior to the passing of the Finance Act, 1957, and faced with the question of action to be taken on the lines discussed above with reference to "disappearing gifts" would have advised firstly that the law was uncertain but probably in favour of the taxpayer, and secondly, that in view of the exploitation of this "loophole" new legislation affecting all deaths after the Act was likely. Now there is a precedent for the latter piece of advice being wrong, and those who through ignorance neglected to give the first piece of advice are likely to gain undeserved credit for their negligence. Although the Government tempered their sympathetic attitude to a certain extent by only exempting from the operation of the Act property comprised in gifts, dispositions or determinations which on the previous law was by the date of the publication of the Bill free of duty, on the assumption that the relevant death had already occurred, the decision taken is an encouragement to rash action based upon superficial knowledge of tax legislation. That a few persons escape duty without any particular merit seems an insignificant price to be paid for causing advice given on estate duty matters to be tempered even further with unpredictability of legislative action.

The retreat of the Government is set out in section 38 (18). An option is given to the persons accountable for the duty chargeable on a death occurring after the Act by reference to a gift, disposition or determination made, effected or suffered *prior to*

(*k*) Finance Act, 1957, s. 17.

April 10, 1957, subject to one condition (*l*). The duty payable by reference to the gift, disposition or determination must be ascertained under the old legislation and under the 1957 Act, on the assumption that the deceased died on April 30, 1957. The condition giving rise to the option is then that under the 1957 Act duty would be chargeable on this hypothetical death on property not chargeable under the old legislation, or would be chargeable on a value determined as at a date earlier than under the old legislation. In other words, if property given or in which a limited interest was disposed of or determined prior to April 10, 1957, (a) had ceased to be subject to duty had the relevant death occurred on April 30, 1957, but would be caught by the new legislation, that property may remain exempt; or (b) has under the new legislation to be valued at a date earlier than the death, the lower of the two valuations may be chosen.

The option is given to the persons accountable for the duty chargeable by virtue of section 38 or such of them as appear to the Commissioners of Inland Revenue to be materially interested (*m*). It must be exercised, if at all, within twelve months of the death or such longer period as the Commissioners may allow. If it is desired that the new section shall not apply, then notice in writing must be given to the Commissioners. If it is desired that the new section shall apply, no action need be taken.

(1) *Sums of money given but not settled by the gift*

Before turning to the main changes effected by section 38 it may be noted that where a sum of money (in any currency) is given to a donee and not settled by the gift or later there is no change. Such property will remain dutiable, if at all, under the prevailing law, and if dutiable the amount on which the duty will be paid will be that sum of money and not the value of any property into which it is converted, and the valuation will be made as at death (*n*).

(2) *Property, other than money, given but not settled by the gift*

In this case various transactions may take place with the property actually given before the death of the donor. If, by the enactments relating to estate duty, which in this respect are not altered by the Finance Act, 1957, the property comprised in the gift is deemed to pass on the death, which includes specifically property which would have been deemed to pass had it not lost its identity

(*l*) *Ibid.*, s. 18 (a).
(*m*) *Ibid.*, s. 18 (b).
(*n*) *Ibid.*, s. 7 (5). See also "Property settled by donee," below.

or ceased to exist (*o*), then if the original property donated has been dealt with in one of the ways considered below, the property which will suffer duty will include other property than that originally given or may fall to be valued at some time other than at the death.

Additional property received by virtue of property given. Where the property given, or part of it, was shares or debentures of a body corporate and the donee is, as holder of those shares or debentures, issued with shares or debentures in the same or any other body corporate, or granted any right to acquire any such shares or debentures, the fresh shares or debentures, or the right to acquire them, will be regarded as having been comprised in the original gift in addition to any other property so comprised (*p*). Whether the shares, debentures or rights accrued to the holder of the donated property as the holder thereof or as an ex-holder is immaterial, and similarly that they or it were acquired not automatically but via an offer thereof or a right of preference gained is within the subsection. The most common example is, of course, the bonus issue and this will now be dutiable as if it formed part of the original gift. The effect of being comprised in the original gift is that the property is dutiable, valued at the date of the donor's death.

This subsection would, apart from express provision, include the straight exchange occurring in a reconstruction, but an exchange is exempted and thus falls within section 38 (1), which is considered below under the heading " Property received in substitution."

Any consideration given for the new shares or debentures or right will be deductible, if money or money's worth but not otherwise, on valuing the property deemed to pass (*q*); but not (a) if being other than a sum of money, it came from the same or another gift from the donor also deemed to pass on his death; or (b) if it is provided directly or indirectly out of the assets or at the expense of the company issuing the shares or debentures or over the shares or debentures of which the right is held, or any associated company (*r*). In particular, the capitalisation or retention of distributable property is not consideration which is deductible.

Property retained in possession and enjoyment of donee. If the original property is retained in the possession and enjoyment of the donee then that is the property which falls to be valued on the

(*o*) *Ibid.*, s. 38 (16).
(*p*) *Ibid.*, s. 38 (4).
(*q*) Finance Act, 1957, s. 38 (5); *cf.* Finance Act, 1940, s. 44, as amended by Finance Act, 1950, s. 46.
(*r*) Finance Act, 1957, s. 38 (5) and (6). An associated company is one controlling, controlled by or under common control with the company.

death. Hence, the racehorse which dies before the donor, as in Lord Sands *obiter dictum*, will still avoid all duty save perhaps on the dead meat.

Property received in substitution. If the donee parts with possession or enjoyment of the property comprised in the gift and receives in substitution property to the full value of that parted with, the property received in substitution will be thenceforth regarded as having been comprised in the original gift, in place of that property with which he has parted (*s*). Full value received for this purpose, means the value which would have been placed on the property had the donor died at that time (*t*), received in money or money's worth, marriage therefore not being sufficient. Property parted with at less than full value is treated in the same way as property given away.

Property received in substitution includes any benefit received by the donee by way of consideration for any sale, exchange or disposition or by way of satisfaction of a debt or security (*u*). Further, any property acquired in pursuance of a right to acquire property is considered substituted for the right, although in this case, as in the case of "additional property received by virtue of the property given" considered above, the value of any consideration given is to be deducted from the value of the substituted property on the death, subject to the same limitation (*a*).

Thus ends the simple joy (if it ever truly existed) of avoiding the duty on the death of the donor by giving redeemable debentures or the benefit of a contract to purchase.

Property given away by donee but not settled by the gift. Where, before the donor's death, the donee makes a gift of the property comprised in a gift to him or parts with it for less than its principal value at that time, then he will be treated as if he continued to have the possession and enjoyment of that property (*b*). The principal value for duty purposes on the death of the donor (*i.e.*, the donor of the original property) will, however, be taken to be the principal value at the date of the sub-gift by the donee. By principal value at a date other than death is meant the value which the property would have borne for duty purposes if valued at that date by reason of the death having then occurred (*c*).

Thus, a gift (not settled) or parting with the property given to him at an undervalue by the donee will cause the dutiable amount (should duty become payable on the death of the original donor) to be the principal value at parting of the property parted with.

(*s*) Finance Act, 1957, s. 38 (1) and (3).
(*u*) *Ibid.*, s. 38 (2).
(*b*) *Ibid.*, s. 38 (3).
(*t*) *Ibid.*, s. 38 (3) and (15).
(*a*) *Ibid.*, s. 38 (5) and (6)
(*c*) *Ibid.*, s. 38 (15).

There is exempted from the provision property parted with at an undervalue to any authority who could acquire the property compulsorily, and such a disposition would merely cause substitution of the consideration received as on a sale for full value discussed above.

Property settled by donee. If the donee makes a settlement of property which was given to him not settled, prior to the death of the donor then the provisions relating to property settled by the donor (as to which see below) will apply to the property comprised in the donee's settlement as if the settlement had been made by the donor's original gift (*d*). If, on the donee's death the property becomes settled pursuant to the donee's will or his intestacy, it will be treated as settled by him and hence by the original donor.

Property ceasing to exist by merger in another interest. Property comprised in a gift may cease to exist because it merges in another property acquired by the donee; for example, a donated leasehold may merge in the freehold reversion subsequently acquired by the donee. In this case there is no substitution of property nor has there been a parting with the property at an undervalue. Nevertheless, the situation is to be treated as if the donee made a gift (not settled) of the property merging or being extinguished in another interest (*e*).

Death of donee before donor. In the case of the donee who dies before the donor, the provisions discussed above (save the settlement by the donee specifically noted as to this contingency) will take effect as if he had not died, and the acts of his personal representatives will be considered his acts (*f*). However, property passing to any person under his will or on his intestacy will be considered as given away by the donee at the date of his death.

Aggregation. Any property deemed to form part of the property comprised in a gift on the donor's death under the above provisions will be deemed property in which the deceased had an interest and hence aggregable (*g*). This is, however, subject to the exception that if that property directly or indirectly represents or is derived from property originally comprised in the gift, and being property in which the deceased never had an interest, the new property will be likewise exempt from aggregation.

(3) *Property settled by the gift*

Two separate cases under the present section arise where the property comprised in a gift *inter vivos* is settled by the gift and

(*d*) *Ibid.*, s. 28 (9).
(*e*) *Ibid.*, s. 38 (3).
(*f*) *Ibid.*, s. 38 (9).
(*g*) *Ibid.*, s. 38 (10).

yet on the subsequent death of the donor is deemed to pass on his death. First, the settlement may remain in being until the death, and secondly, the settlement may come to an end. These two cases now give rise to separate methods of ascertainment of what property is deemed to pass.

Settlement remaining in being until death of donor. By section 38 (8) it is provided that where property comprised in a gift *inter vivos* is deemed to pass on the death of the donor, which again specifically includes property which would have been deemed to pass had it not lost its identity or ceased to exist (*h*), and that property was settled by the gift, the duty will be chargeable as if the property comprised in the gift had consisted of the property comprised in the settlement at the death, subject to certain exceptions. Clearly additional property may have become subject to the same settlement otherwise than from the donor. Hence there is excepted from the dutiable property such part as neither is nor represents, nor is derived from, property originally comprised in the gift. A further exception is made by section 38 (14) which removes from the property comprised in the settlement at the death accumulated income.

Hence, for gifts which are settled there is relatively little difficulty if the settlement remains in being until the donor's death. The property comprised in such settlement traceable from the original donor and the accretions thereto (other than accumulations or property from persons other than the donor) is dutiable at the death, valued at the death. Where the settlement comes to an end and as to all or some of the property comprised therein prior to the death of the donor, then the rules below apply in the case of the property or such of it as has ceased to be subject to the settlement.

Settlement coming to an end before the death of the donor. If the settlement made by the gift of the donor comes to an end at some time prior to the death of the donor, as respects all or any of the property comprised in the settlement, the question of the dutiable property on the subsequent death of the donor by reason of the original gift depends to some extent upon the identity of the recipient of the property so released. The only property with which we are concerned is, of course, the property comprised in the settlement which, had the death of the donor occurred immediately prior to the settlement having come to an end in respect thereof, would have been considered under the last paragraph hereof as comprised in the original gift. In other words, only property which was given by the donor, or represents or is derived from

(*h*) *Ibid.*, s. 38 (16).

such property otherwise than by accumulation of income at the time that the settlement comes to an end, is to be considered.

If property as respects which the settlement comes to an end reverts to the donor so that he becomes absolutely and beneficially entitled thereto in possession it ceases to be dutiable by virtue of the gift, although it may become liable as part of his estate at his death if he still owns it (*i*). As to such of the property as does not revert to the donor, but as respects which the settlement comes to an end, it will be treated as comprised in the original gift in addition to other property so comprised at its principal value (*k*) at the time that the settlement comes to an end. Further, any consideration given by the donor, other than rights under the settlement, for any of the property so reverting to him will also be regarded as comprised in the original gift at its principal value at the said termination of the settlement.

Thus, the effect of a settlement coming to an end with respect to any property comprised therein produces a result comparable to the case where an absolute donee himself gives away the property comprised in the gift as discussed above.

Aggregation. The position with regard to aggregation is the same as in the case discussed above with regard to absolute gifts, the donor being considered to have had an interest in any property dutiable unless traceable to property in the original gift in which he never had an interest (*l*).

(4) *Dispositions and determinations of limited interests*

Where any property is deemed to pass on a death by virtue of the Finance Act, 1940, s. 43, by reason of a disposition or determination of an interest limited to cease on the death, the duty is chargeable on "the property in which the interest subsisted." The definition of the "property in which the interest subsisted" is now defined by somewhat similar rules to those affecting the ascertainment of the property comprised in a gift which was settled, discussed above.

Settlement in being at death. The property in which the interest limited to cease on a death subsisted is to be taken as the property comprised at the time of the death in the settlement under which the interest subsisted (*m*). This is subject to the exception of property comprised therein at the death which neither is nor represents, nor is derived from property in which the interest subsisted prior to the disposition or determination. In other words, the

(*i*) *Ibid.*, s. 38 (1), proviso.
(*k*) *Ibid.*, s. 38 (15).
(*l*) *Ibid.*, s. 38 (10).
(*m*) *Ibid.*, s. 38 (12) (a).

property is traced through from that comprised in the settlement prior to the determination or disposition. Aggregation or not in this case depends upon whether or not the deceased had an interest under the settlement, or whether or not it was made by him or made directly or indirectly at his expense or out of funds provided by him (*n*).

Settlement coming to an end before the death. Here we have an exact parallel with the case of a settled gift ceasing to be subject to the settlement on its coming to an end. The " property in which the interest subsisted " will be the property in respect of which the settlement comes to an end valued at that time, other than property to which the deceased became absolutely and beneficially entitled in possession, plus any consideration other than rights under the settlement given by the deceased for the property coming to him (*o*). The property in respect of which the settlement comes to an end, and which is relevant to the calculation is, of course, only such as would at that time have been deemed " property in which the interest subsisted " had the deceased then died.

(5) *Exclusive possession*

The ascertainment of whether possession and enjoyment of the dutiable property pursuant to gift or disposition or determination of a limited interest was at a particular time assumed or had by any person to the exclusion of any other person is now to be determined, in so far as the identity of the property is the governing factor, by reference to the property from time to time potentially dutiable, namely, that which would be dutiable if the donor or person on whose death the interest ceases died at such time (*p*).

(6) *Double charge to duty on same property*

It may happen by the rules set out above that a charge to duty is made twice by reference to the same property. For example, X gives Y a house and settles further property on Y and his children. Y sells the house to the trustees at an undervalue. X dies, five years not having elapsed since the gifts. The house will be dutiable as part of the settled fund valued at the death; the house will again be dutiable as the property comprised in the gift valued at the date of sale to the trustees. Both charges will take effect despite the Finance Act, 1894, s. 7 (10). If the times for valuation are different, the identity of the property will not escape the double charge (*q*).

(*n*) *Ibid.*, s. 38 (12) (b).
(*o*) *Ibid.*, s. 38 (12), proviso.
(*p*) *Ibid.*, s. 38 (13).
(*q*) *Ibid.*, s. 38 (15).

Overseas Trade Corporations

No attempt can be made in the space available to summarise effectively the provisions of Part IV of the Finance Act, 1957, and Schedules IV to VIII associated therewith, which set up the new rules for the taxation of companies therein defined as overseas trade corporations (now referred to as O.T.C.s). Nevertheless, the following may be a useful guide.

The object of the legislation is to exempt overseas trading profits of U.K. resident companies from U.K. income tax and profits tax whilst those profits are used to build up the trade of the company and are not distributed to the persons "owning" the company. Because of the difficulty of segregating overseas profits from U.K. profits the scheme adopted is to grant exemption to companies resident in the U.K. whose activities are so restricted as to make virtually all their trading profits overseas profits, and extending the exemption to all their trading income.

An O.T.C. is defined by section 23 (1) and must eschew the activities set out in section 24. Only if the qualifications are held and the disqualifications avoided during a complete year from April 6 to the following April 5 will the status of O.T.C. be achieved for that year (*r*), subject to (i) an absolute right for the company to opt out if it has never been an O.T.C. (*s*), (ii) a qualified right to opt out if it has been an O.T.C. at a previous time (*t*), (iii) a right for the Commissioners to disregard certain minor lapses from the strict qualifications (*u*). The status can only be achieved in respect of such a year except (a) the year 1957–1958, when the starting date may be any date before April 5, 1958; (b) the company is formed or wound up in such a year, when the status may be held during the period of existence, and (c) the company becomes or ceases to be resident in the U.K. in such a year, when the status may be held during residence (*a*).

Whilst holding status as an O.T.C., trading income is exempt from income tax and profits tax (*b*), but investment income gains no exemption and cannot be reduced by trading losses, the two types of income being defined by section 35. Income tax may become payable by the O.T.C. by reference to the exempt profits (i) if a surtax direction is made (*c*) (in addition to surtax), (ii) if a dividend is paid (*d*), (iii) if a grant or loan is made to an associated

(*r*) *Ibid.*, s. 30 (1).
(*s*) *Ibid.*, s. 23 (2) and (5).
(*t*) *Ibid.*, s. 23 (3) and (4).
(*u*) *Ibid.*, s. 30 (2) (4) and (5).
(*a*) *Ibid.*, ss. 30 (1) and 37 (2).
(*b*) *Ibid.*, ss. 25 (1) and (2) and 29 (1).
(*c*) *Ibid.*, s. 33.
(*d*) *Ibid.*, s. 26 (1) and (5) and Sched. V.

person, namely, one controlling, controlled by or under common control with the O.T.C., (iv) a grant or loan is made to a director or member if the O.T.C. is director-controlled, (v) a capitalisation and a reduction of capital are both carried out (similar to Finance Act, 1951, s. 31, for profits tax distribution charge), (vi) a liquidation takes place and an amount in excess of issued capital is distributed (*e*), (vii) the company being a non-trading O.T.C. loses its status as such, (viii) the company, having ceased to be an O.T.C., ceases to trade (*f*). If, however, a dividend, grant or loan is paid to a non-resident or another O.T.C. which is a principal, subsidiary or co-subsidiary of the payer, the recipient may reclaim tax exacted by reference to the payment (*g*).

Profits tax is never taken from the O.T.C. in respect of trading income but may be taken from the recipient, for dividends, grants or loans out of trading income will not be treated as franked investment income of the recipient (*h*).

Double taxation relief is given when income tax is paid on distribution or without distribution (as set out above) of trading income, and may be allowed against profits tax suffered by the recipient of a dividend, grant or loan from the O.T.C. (*i*).

The income tax charge with reference to trading income when it arises is measured by the amount of trading income deemed to be distributed under the Fifth Schedule, and this necessitates computing trading income which may be done in one of four different ways according as to whether at the relevant time the company was (*k*) or was not (*l*) an O.T.C., or if the reason for the computation is the winding up of the company (*m*) or a surtax direction (*n*). Further income tax changes are found in the Fourth Schedule, and in particular the inability of an O.T.C. to give or receive subvention payments. Further profits tax changes are found in the Seventh Schedule, and in particular the right to break a grouping notice if one member of a group becomes an O.T.C. Schedule VIII contains provisions relating to the change-over from non-O.T.C. to O.T.C. or vice versa so far as income tax is concerned, the profits tax provisions being in the last two paragraphs of Schedule VII.

Methods of stopping tax avoidance are (a) the right for the Commissioners to write in true value on a sale to or by an

(*e*) *Ibid.*, s. 27 and Sched. VI, paras. 1, 2, 3 and 4 (for (iii), (iv), (v) and (vi)).
(*f*) *Ibid.*, Sched. VI, para. 5 (for (vii) and (viii)).
(*g*) *Ibid.*, ss. 26 (2) (3), 35 (3) and Sched. VI, para. 1 (1) (c).
(*h*) *Ibid.*, s. 29 (2).
(*i*) *Ibid.*, ss. 28 and 29 (3).
(*k*) *Ibid.*, Sched. V, paras. 1–5.
(*l*) *Ibid.*, Sched. V, para. 6, and s. 34 (1) (d).
(*m*) *Ibid.*, Sched. V, paras. 12–17.
(*n*) *Ibid.*, s. 33 (2).

O.T.C. (*o*), a much enlarged version of that in the Income Tax Act, 1952, s. 469; (b) a right to the Commissioners to apply the disadvantages of O.T.C. status to a company ceasing deliberately to hold that status merely for tax gain (*p*); and, of course, (c) the provisions for exacting the income tax from trading profits otherwise than merely on declaration of a dividend, as noted above. The formation of O.T.C.s is encouraged by easing the path of reconstruction to produce them (*q*).

Miscellaneous

Thus we reach the reduction of the National Land Fund in section 41, and a slightly harsher treatment of the South of Scotland Electricity Board for profits tax purposes. The road has been rushed along but it is hoped that the signposts created will assist the traveller.

(*o*) *Ibid.*, s. 31.
(*p*) *Ibid.*, s. 30 (3).
(*q*) *Ibid.*, s. 32.

ALTERNATE DIRECTORS

By Douglas Barker, Barrister-at-Law, and
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It is in many cases convenient for a company to provide in its articles of association that a director may appoint an alternate director to act for him in circumstances when the director is unable for any reason to act on his own behalf. Table A in the Schedule to the Companies Act, 1948, does not provide for alternate directors. The method of appointment and functions of alternate directors are subject to the provisions of the Companies Act, 1948, hereinafter referred to and governed by the articles. A company cannot have alternate directors if the articles do not contain appropriate provisions. The articles usually provide that an alternate director is to be appointed by the director whose place he is temporarily to occupy. The articles may limit his choice of an alternate to any one of the other directors or may make the appointment subject to the approval of the board of directors or the company in general meeting.

The articles may provide either that the alternate director be deemed to be a director of the company or the agent of the director appointing him. In the former case, which is by far the most usual, all the provisions of the Companies Act, 1948, and of the company's memorandum and articles of association concerning directors apply to the alternate director except in so far as they are excluded expressly or by necessary implication. In the latter case the alternate director is in fact the agent or attorney of the director appointing him and, although there is no authority on the point, it is considered that in this case the above provisions concerning directors do not apply except in so far as the activities of the alternate director bring him within the definition of director in section 455 of the Act. It must also be borne in mind that the director's powers *vis-à-vis* third parties, *e.g.*, the powers to bind the company largely depend on his ostensible authority, and cannot necessarily be limited by the wording of the articles. In any event the articles must give clear and unambiguous authority for such an appointment. Precedents for each type of appointment (numbered respectively 1 and 2) are given below (*a*).

(*a*) See *post*, pp. 746 *et seq.*

It is always advisable to provide that the appointment be made in writing and that notice thereof signed by the director so appointing be given to the company. Similarly the company should be so notified on the cessation of the appointment.

It is usual to provide that an alternate director need not hold qualification shares. The Companies Act, 1948, s. 182, fixes a period two months (or such shorter time as may be fixed by the articles) after which a director who does not obtain his qualification shares must vacate his office. It is unusual for an alternate director to hold his office for a long period, so that even if qualification shares are required they need not be obtained if the period of the appointment is shorter than two months or that stated in the articles.

For the period of his appointment the alternate director is under the same liability for the acts and omissions of the board of directors as any other director.

There are also the obligatory provisions of the Companies Act to be complied with. His shareholding in the company and in any of the company's subsidiaries will have to be shown in the register of directors' shareholdings (s. 195).

The name of the alternate director will have to appear in the register of directors (s. 200), and on the company's business letters, trade catalogues, circulars and showcards showing his christian name or initials, surname, and any former surname and his nationality, if not British (s. 201).

The emoluments of an alternate director need not be set out separately in the accounts laid before the company, since only aggregate figures for all the directors are required (s. 196). If the articles provide that the alternate director takes the emoluments the director appointing him during the period of his appointment this aggregate figure will be unchanged by the appointment.

If the company is a public company or a subsidiary of a public company an alternate director may not, subject to what is said below, be appointed after he has reached the age of seventy and if the alternate director or his appointor reaches that age during the period of his appointment, the alternate director must vacate his directorship at the conclusion of the following annual general meeting. To enable an alternate director to be appointed to continue in office after the age of seventy requires special notice to be given to the company and the appointment made or ratified by the company in general meeting. These provisions however may be expressly excluded or modified by the company's articles.

If the second precedent (*b*) is used the alternate is not strictly a

(*b*) *Post*, p. 747

director at all but an agent for his appointor and no more. As against the company, the appointor is liable for all acts of his alternate as if they were his own, but it is considered that there are exceptions to this rule. We do not think that an alternate would be outside the scope of the quasi-criminal sections of the Act (*e.g.*, s. 333), even if his position were merely that of an agent of the appointor. A principal, as a general rule, is not vicariously liable for the criminal or quasi-criminal acts of his agent, though the director appointing might incur liability to the company in respect of such acts if he had not taken reasonable care in choosing the particular appointee as alternate. An alternate whose activities brought him within the purview of these sections would, we think, be considered to have, by his acts if not by the terms of his appointment, brought himself within the definition of "director" or "officer" of the company. Another exception or apparent exception is constituted by the powers an alternate can exercise on behalf of the company as against third parties. The limits of his powers in this context will generally depend, not on the alternate's real authority as defined by the articles and the terms of his appointment, but on his ostensible authority which will in many cases be coextensive with that of a "real" director.

The provisions of the Companies Act, 1948, and of the memorandum and articles concerning directors have no application. The alternate director must be expressly entitled to attend board meetings on behalf of his appointor and be able to speak and vote at such meetings. His position is analogous to that of a general proxy for a shareholder at a general meeting of a company. It is necessary for the articles to provide that the alternate director be counted as a quorum at all meetings of the board of directors or else he will not be so entitled.

It must finally be stressed that the subject of alternate directors is one on which there is practically no authority. Therefore, much that is said in the article is of necessity conjectural, especially as regards the type of alternate director who is deemed to be the agent of the appointor and not an officer of the company. This uncertainty as to the exact status of alternate directors is evidently far outweighed in practice by the usefulness of being able to appoint alternate directors by making the necessary provision in the articles. Articles of the types indicated under the precedents (*c*) and frequently a mixture between the two, are found increasingly frequently in company's articles. Until the problem of alternate directors has been considered by the courts, it is not possible to

(*c*) See pp. 746 *et seq.*, *post.*

guarantee that any particular article or articles adopted by a company in this behalf will not under some circumstances lead to difficulty or at least uncertainty. The only advice that can be given is that the articles should set out in the greatest possible detail and express all the powers that it is intended to confer on the alternate director and all the rights as to remuneration and otherwise that it is intended that he should enjoy. If this is done the risk that there may be uncertainty on these points at a later date is enormously reduced.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By F. R. Crane, ll.b., Solicitor

Bridges v. *Mees* [1957] 3 W.L.R. 215; [1957] 2 All E.R. 577 (Ch.D.)

Registered land—prospective purchaser in possession—overriding interest—Limitation Act, 1949, ss. 7, 9, 10; *Land Registration Act*, 1925, *ss.* 59, 70, 75.—In 1936 the plaintiff contracted to purchase from a development company a small piece of registered land for £7, and went into possession where he remained. He paid the purchase-money in 1937, but never took a transfer. In 1956 the company by its liquidator conveyed the piece of land to the defendant, who was registered as proprietor. The plaintiff claimed to be beneficial owner and asked for rectification of the register.

Harman J. held, first, that the company became a bare trustee for the plaintiff once the purchase-money was paid, and that the plaintiff had acquired a title by adverse possession, so the defendant held on trust for him (Land Registration Act, 1925, s. 75). The learned judge considered the provisions of the Limitation Act, 1939, ss. 7, 9, and 10, and held that since that Act time can run in favour of a *cestui que trust* against his trustee, except where there is settled land or a trust for sale (Limitation Act, 1925, s. 7 (5); Underhill's *Law of Trusts and Trustees*, 10th ed., at p. 232—cited by Harman J.; Preston and Newsom's *Limitation of Actions*, 3rd ed., pp. 147, 148).

Secondly, Harman J. held that the plaintiff was entitled to an overriding interest not only as a person entitled by adverse possession under section 70 (1) (k) but also as a person in actual occupation under section 70 (1) (g). The plaintiff's rights, binding the land under the last-mentioned paragraph, were an equitable estate in the land together with the right to sue for specific performance. The learned judge followed *Woolwich Equitable Building Society* v. *Marshall* [1952] Ch. 1 and rejected the argument that overriding interests do not include rights which may in the alternative be protected on the register. This conformation that overriding interests may be equitable is, it is suggested, a point of considerable importance.

R. v. *Judge Dutton Briant, ex p. Abbey National Building Society* [1957] 3 W.L.R. 249; [1957] 2 All E.R. 625.

Mortgage—mortgagee's right to possession—jurisdiction of county court—County Courts Act, 1934, *ss.* 48, 52.—The common law right of a legal mortgagee to take possession of the land at any time, and its relevance to practice and procedure, was again emphasised in this case.

(For other decisions, see *ante*, pp. 68, 229–231.) Under the County Courts Act, 1934, the county court has jurisdiction (a) to hear actions for the recovery of land where the net annual value does not exceed £100 (s. 48 (1) as amended by the County Courts Act, 1955), and (b) to hear actions for the enforcement of a mortgage or charge where the sum owing does not exceed £500. The Abbey National Building Society sought possession in the county court of mortgaged premises of a net annual value less than £100, but where the sum owing was some £2,000. The county court judge held he had no jurisdiction. The Divisional Court (Lord Goddard C.J., Byrne and Devlin JJ.) made an order of mandamus, on the ground that the mortgagee's right to possession was primarily a common law right, whereby section 48 of the County Courts Act, 1934, became the controlling section. Lord Goddard C.J., who delivered the principal judgment, emphasised both the inconvenience and cost that would result if all actions for possession by mortgagees had to be brought in the High Court, and also that the form of judgment (Form 385, under the County Court Rules, Ord. 24, r. 4 (2)) contains a proviso for redelivery of possession if the mortgage money is paid off before sale. He also remarked that an equitable mortgagee would have to proceed under section 52 of the County Courts Act.

Norwich Union Life Insurance v. *Preston* [1957] 1 W.L.R. 813; [1957] 2 All E.R. 428 (Ch.D.)

Mortgage—order for possession—furniture left by mortgagor.—A mortgagee obtained an order for possession under R.S.C., Ord. 55, r. 5A and in due course the mortgagor was evicted, but he refused to remove his furniture, motor-car and effects. Wynn-Parry J. held that, on the common sense of the matter, " possession " meant vacant possession, applying *Cumberland Consolidated Holdings* v. *Ireland* [1946] K.B. 264, and that removal of the offending items by the mortgagees themselves was not a " practicable policy " at the present day. He therefore made an order for removal against the mortgagor.

Re Pinewood Estate, Farnborough [1957] 3 W.L.R. 256; [1957] 2 All E.R. 517. (Ch.D.)

Restrictive covenant—methods of annexation of benefit—unenforceability—Law of Property Act, 1925, *s.* 84 (2).—On December 19 and 20, 1899, a common vendor conveyed the whole of an estate laid out in lots by four separate conveyances to, respectively, A, B, C, and B and D as tenants in common. The four conveyances contained restrictive covenants which it was agreed constituted a building scheme. On December 21, 1899, the four purchasing parties (A, B, C, and B and D as tenants in common) entered into a deed whereby they " released and discharged " the existing covenants and covenanted " for himself or herself his or her heirs and assigns with each other party hereto and every two or three of them his her or their heirs and assigns and with the intent to bind the land to which the restrictive covenants contained in the schedule to these presents relate . . . to observe . . ."

the restrictive covenants contained in the schedule. These words, it will be seen, expressly annexed the burden but not the benefit of the covenants. The applicants, successors in title to several lots, sought a declaration under the Law of Property Act, 1925, s. 84 (2) that the covenants were no longer enforceable; the respondent, the present owner of another lot, claimed to be entitled to the benefit of the covenants.

Wynn-Parry J. held:—(1) that the deed of December 21, 1899, was not supplemental to the original building scheme but effectively destroyed those covenants, and no new scheme existed because the necessary conditions laid down in *Elliston* v. *Reacher* [1908] 2 Ch. 374 were not fulfilled; (2) there being no building scheme, and it being conceded that the respondent could not allege either express annexation of the benefit nor a complete chain of assignments thereof, there was no fourth class of enforceable covenants; (3) that in any case the joint covenant by B and D with B was void, following *Ridley* v. *Lee* [1935] Ch. 591.

This decision illustrates, as do so many of the cases concerning restrictive covenants, the strict interpretation placed on the words creating the covenant and how limited are the words which will annex the benefit once and for all. It is also a reminder of the limits set by *Ridley* v. *Lee, supra,* to the Law of Property Act, 1925, s. 82. But its chief interest, it is submitted, lies in the learned judge's considered rejection (after referring to *Whatman* v. *Gibson* (1838) 9 Sim. 196, *Osborne* v. *Bradley* [1903] 2 Ch. 446 and *Re Union of London and Smith's Bank, Ltd.'s Conveyance, Miles* v. *Easter* [1933] Ch. 611) of the respondent's contention that the deed showed "clearly by its language an intention that the parties should be mutually bound by the restrictions and that the element of mutuality is enough to carry the benefit of the restrictive stipulations" ([1957] 3 W.L.R. at p. 261; [1957] 2 All E.R. at p. 520). Here the decision expresses the orthodox view and invites comparison with the contrary conclusion reached on positive covenants in *Halsall* v. *Brizell* [1957] Ch. 169, noted *ante* p. 160, which was not cited. One may reiterate the view there expressed, that further authority will be needed before *Halsall* v. *Brizell* can be regarded as opening a new chapter in the history of covenants affecting land.

Re Forest Hill, Park Crescent, Roundhay, Leeds; Re Murgatroyd's Conveyance (1957) 8 P. & C.R. 179 (Ch.D.)

Restrictive covenant—application for discharge—objector's costs —Law of Property Act, 1925, *s.* 84 (2).—This was a successful application for a declaration, under the Law of Property Act, 1925, s. 84 (2) that certain property was no longer affected by restrictive covenants. The respondent alone of all those canvassed by the applicant had maintained her objection; she had also made service difficult and on the hearing she was not represented and did not appear. Nevertheless Harman J. refused to make any order for costs against her, and also said that had she appeared he would have given her costs. This decision confirms the view stated in Newsom on *The Discharge and Modification of Restrictive Covenants,* pp. lvii, lviii, that applicants,

not respondents, usually bear costs, whatever the result of the application.

Macdonald v. *Macdonald* [1957] 2 All E.R. 690 (Ch.D.)

Beneficial interest in land—purchase of house by family enterprise —contribution by husband, wife and third party—principle of division.—The facts here might be described as excessively complicated. Early in 1935 a wife (the plaintiff) and her mother, remainderman and tenant for life under a settlement, used £215 of the fund to contribute to the purchase of a house costing £715; the husband took the conveyance—without the consent of the others—and raised the remaining £500 by mortgage. All three took up residence in the house but late in 1935 the mother died unexpectedly; she was intestate and her estate passed to the plaintiff. From 1935 to 1939 the husband made mortgage repayments but from 1939 to 1950 the wife paid interest and some capital. She divorced him in 1948. In February 1950 the husband took over the repayments and an acute dispute began. The husband, who had married the defendant after the divorce of 1948, died intestate in 1954 and the plaintiff now sought, in effect, to recover all, or her share, of the house and contents from the defendant.

Though this was not an application under the Married Women's Property Act, 1882, s. 17, Roxburgh J. held that similar principles to those enunciated in cases under that section should be applied and that the choice was between a division based on contribution, as in *Re Roger's Question* [1948] 1 All E.R. 328, or one based on equality, as in *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63. The learned judge then held that, looking at the transaction as a whole, a common family enterprise between the three original parties was intended as regards the house (it being conceded that the plaintiff was entitled to the furniture) so that the proper division, up to February 1950, was two-thirds to the plaintiff and one-third to the defendant, representing the husband. As from February 1950 when there was continuing dispute, Roxburgh J. said "the truly equitable course, as distinguished from the humanly practical course" was to take an account, and on this point he left the parties liberty to apply.

It is interesting to note here the application beyond husband and wife of what was called "palm-tree justice" in *Newgrosh* v. *Newgrosh* (unreported, cited in *Rimmer* v. *Rimmer*, *supra* [1953] 1 Q.B. at p. 68). Yet on the view taken of the facts no better method would seem available.

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2. *TRUSTS*

By F. R. Crane, ll.b., Solicitor

Re Meux deceased [1957] 3 W.L.R. 377, *sub nom.*
Re Meux's Will Trusts [1957] 2 All E.R. 630 (Ch.D.)

Variation of settlements—town and country planning—compensation—whether proceeds of sale under trust for sale—sale of infant's

entailed interest and resettlement of purchase-money—Law of Property Act, 1925, *s.* 28—*Settled Land Act*, 1925, *s.* 58—*Town and Country Planning Act*, 1954, *s.* 66—*Trustee Act*, 1925, *s.* 53.—This case, a further addition to the line of authorities concerning the variation of trusts in order to limit the incidence of taxation, involved two quite separate points.

Compensation paid to trustees of a trust for sale under the Town and Country Planning Act, 1954, Parts I, II, and V was held to be capital money, and Wynn-Parry J. was asked whether it should also be regarded as proceeds of sale within the Law of Property Act, 1925, s. 28 (i). The reason for this question does not appear in the reports, but presumably an affirmative answer would have led to an application for variation of the trusts under the Settled Land Act, 1925, s. 64, following *Re Simmons* [1956] Ch. 125, noted *ante*, Vol. 20, p. 67. (In fact only paras. 1, 2 and 6 of the summons were considered by the court.) Though by the Law of Property Act, s. 205 (1) (xxiv) "sale" means a sale "properly so called," yet by section 28 (1) proceeds of sale include moneys arising from the exercise of any power, and it was argued that the compensation was derived from compromise of a claim under the Settled Land Act, 1925, s. 58 (1). Wynn-Parry J. held, however, that the money was paid solely under the Town and Country Planning Act, 1954, and that neither section 66 of that Act, nor the Town and Country Planning (Mortgages, Rent Charges, etc.) Regulations, 1955, gave it the character of proceeds of sale. Consequently though capital money it was not proceeds of sale. The fact that no application under the Settled Land Act, s. 64 followed gives some support to the view, submitted in the note to *Re Simmons, supra, ante*, Vol. 20 at p. 68, that capital money settled to go with land held on trust for sale is not within the ambit of section 64.

The will creating the trusts provided that the income should be paid to the plaintiff for life with remainder to the plaintiff's first and other sons successively in tail male, with remainders over. (As the will was made in 1927 and the testator died in 1929 this must have been one of the first instances in which advantage was taken of the power to entail personalty created by the Law of Property Act, 1925, s. 130 (1).) The plaintiff had three sons, the eldest born in 1952. An order was now sought under the Trustee Act, 1925, s. 53, enabling the infant first defendant's entailed interest to be conveyed to the plaintiff for value, the purchase price being paid to the trustees of a new settlement to be made. That an entailed interest can be barred under this section was decided by *Re Gower's Settlement* [1934] Ch. 365 but difficulty was caused by the decision in *Re Heyworth's Settlements* [1956] Ch. 364, noted *ante*, Vol. 20 p. 324, that jurisdiction depended on the words in section 53, "with a view to the application" of the capital for the maintenance, benefit or education of the infant. Wynn-Parry J., however, referred to *Re Ropner's Settlement* [1956] 1 W.L.R. 902; [1956] 3 All E.R. 332, noted *ante*, Vol. 20, p. 405, where advancement of sums to be settled was permitted under the Trustee Act, 1925, s. 32. The learned judge said "In my view, it is rightly said that the word 'apply' in section 32 and 'application' in section 53 should be given the same meaning, and, in my view, the proposal in this case, which involves transferring proceeds of sale to the trustees of the proposed settlement, would amount to an 'application'

within the meaning of that word as used in section 53 of the Trustee Act, 1925" ([1957] 2 All E.R. at p. 637; in this passage in [1957] 3 W.L.R. at 386 the word "wrongly" is printed instead of "rightly" in the first line, which must be an error; also, something has gone wrong with the opening sentence of the first paragraph on p. 387 of the W.L.R., which does not make sense as it stands). Wynn-Parry J. went on to reject the argument that what was proposed was really two transactions—barring the entail within the jurisdiction conferred by section 53, and resettlement outside it—because, he said, no court would agree to any proposal that did not make provision for the persons entitled in remainder to the infant tenant in tail. As a result variation of the settlement was successfully achieved.

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3. *WILLS*

By A. Kiralfy, Barrister-at-Law

Re Cockburn [1957] 3 W.L.R. 212; [1957] 2 All E.R. 522

Trusts of will after completion of administration—appointment of trustees.—A personal representative cannot assign his office, except for the working of the doctrine of chain of representation through executors. But a personal representative may also be appointed trustee of the trusts of the net estate after the completion of administration and payment of legacies. In such a case he comes within the definition of "trustee" in the Trustee Act, 1925, s. 68 (17), it is submitted, as the context no longer excludes the application of that definition to personal representatives once he has "become a trustee." The problem of when a personal representative becomes a trustee is still large and interesting, but it is sometimes quite simple to solve. Danckwerts J. so found it in the instant case. The testator executed a will in 1928 providing for continuous trusts and died in 1947. None of the executors could or would take out probate. J. and C. then took out letters of administration *c.t.a.* The administration of the estate being duly completed they asked whether they had power to appoint substitute trustees of the estate. The learned judge held that there was no reason why they should not. They were at the point of becoming trustees of the will. The provisions of the Trustee Act, 1925, s. 36, for appointing new trustees when existing trustees wish to be discharged were applicable to administrators as well as executors. *Re Ponder* [1921] 1 Ch. 59 was followed. That was a case where an administratrix secured the appointment of an additional trustee to act with her, after she had wound up the estate, but there is no distinction in principle where the administrator wishes to be discharged completely.

Danckwerts J. rejected the arguments based on a wide interpretation of some dicta in *Harvell* v. *Foster* [1954] 2 Q.B. 367 (C.A.). In that case the personal representative had decamped with the assets after administration and realisation of the net estate, but before accounting for the net estate to the persons entitled. The sureties on

the administration bond were held properly liable. Here there was no breach of trust and the administrators were truly *functi officio*. (I pointed out in my note on *Harvell* v. *Foster* in 18 *Conveyancer* 511, that that case might not apply to a situation where the administrator was also a trustee of the will, which is what happened in the present case.)

(Williams, *Executors*, 868.)

Re Davies [1957] 1 W.L.R. 922; [1957] 3 All E.R. 52.

Legacies prima facie cumulative.—This was a short point. Mary made a will in 1939 leaving David £350 and a codicil in 1954 expressly "increasing" the legacy by a bequest of £1,000. There was no ground for treating the new legacy as superseding the old, and David was held entitled to both.

(Theobald 153)

Class Gift—Class Closing earlier after disclaimer.—Mary left her residuary estate to W., J. and Primrose. Primrose's share was to be hers for life and then be divided among her issue. Mary died in 1955. Primrose renounced all interest under the will, having then three children alive, two of them of full age and the third very near it. It was held that there was an acceleration of the vested gift over and that the class closed in favour of the three existing children, to the exclusion of children to be born to Primrose during the rest of her life, or after-born grandchildren. *Jull* v. *Jacobs* was followed ((1876) 3 Ch.D. 703). The result is convenient but rather hard, but that is the common effect of these class-closing rules. The alternative would be an intestacy for the rest of Primrose's life, and a division among her children and remoter issue then living. It is possible to distinguish the earlier cases, for there the acceleration was unintentional, owing to the attestation of the will by the beneficiary; here Primrose was able to alter the destination of the property by a deliberate action.

(Theobald 679.)

Re Marshall; Barclays Bank, Ltd. v. *Marshall* [1957] 3 W.L.R. 538; [1957] 3 All E.R. 172 (C.A.).

Adoption—conflict of laws—foreign legislation inapt to give status of child.—The Court of Appeal have affirmed Harman J. ([1957] Ch. 263 noted *ante*, p. 237) on the facts. If a testator is domiciled in England then English law at his death determines the meaning of "children" in his will. The court did not consider the law of British Columbia at the moment of the testator's death as having equated a child adopted in that Province in all respects with a natural-born

child. The court left open the wider issue whether our law would recognise an adoption under any foreign legislation as conferring such status, and thought it might be distinguished from legitimation, in view of the natural blood tie in that case. In the instant case there was a substitutionary gift to the issue of a cousin and the cousin adopted a child under British Columbian law shortly before the testator died.

(Theobald 282)

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4. *LANDLORD AND TENANT CASES*

By D. Macintyre, m.a., Barrister-at-Law

Kanda and another v. *Church Commissioners for England*
[1957] 3 W.L.R. 353; [1957] 2 All E.R. 815 (C.A.)

Leasehold Property Repairs Act, 1938—*leave to proceed against tenant after service of notice of breach—assignment of lease—proceedings against assignee without leave and without service of notice —validity of judgment against assignee.*—In January 1956, the landlords in this case served on their tenant a notice under section 146 of the Law of Property Act, 1925, and section 1 of the Leasehold Property Repairs Act, 1938, relating to certain alleged breaches of repairing covenants contained in the lease. In January, 1957, the landlords obtained leave to start proceedings against the tenant (who had served a counter-notice under the Act of 1938) and issued a writ against him. In February, 1957, the landlords obtained leave upon an *ex parte* application to the master to amend the writ by joining as defendant an assignee of the tenant, to whom the tenant had assigned the lease in January, 1957; and in March, 1957, the amended writ and statement of claim were served on the assignee, and judgment was entered against him in default of appearance. No statutory notice had been served on the assignee; nor had any leave been obtained to start proceedings against the assignee under the Act of 1938. On an application by the assignee to have this judgment set aside, the Court of Appeal held that, although it was not necessary to serve a new statutory notice on the assignee, since the Law of Property Act only requires such notice to be served on the person who is "the lessee" at the time when the notice is given, leave to bring proceedings against the assignee should have been obtained. An argument by counsel for the landlords, that, when once leave to proceed has been given on the ground that one of the matters specified in section 1 (5) of the Act of 1938 has been established, the purpose of section 1 has been achieved, so that there is no reason why a new party should not thereafter be added without leave, was rejected. Section 1 (3), it was held, states definitely that "no proceedings" shall be taken without the leave of the court. Leave had

only been given to take proceedings against the tenant. The proceedings against the assignee were different proceedings, for which no leave had been given under section 1 (3).

It was pointed out, however, that had the landlord applied by summons in February for leave to start proceedings against the assignee by joining him as a defendant to the action already started against the tenant, his application might well have succeeded.

London Hospital Governors v. *Jacobs* (*No.* 2) [1957] 3 W.L.R. 102; [1957] 2 All E.R. 418n (C.A.)

Fitness for human habitation—underground room—Housing Act, 1936, *s.* 12 (2)—*Housing Repairs and Rents Act,* 1954, *s.* 9.—The Court of Appeal held in this case that section 9 of the Housing Repairs and Rents Act, 1954, which provides that a house is to be deemed to be unfit for human habitation "if and only if" it is so far defective in one or more of the eight matters specified in that section that it is not reasonably suitable for occupation in that condition, has amended section 12 (2) of the Housing Act, 1936. An underground room, therefore, which does not offend against the Act of 1954, will no longer be deemed to be unfit for human habitation, even though it would have been deemed to be so under the Act of 1936.

The point arose out of a notice of increase of rent under section 25 of the Act of 1954, which has now been repealed by the Rent Act, 1957. It seems, however, that the decision will continue to be applicable to cases arising out of the obligations imposed on landlords by section 2 of the Act of 1936. It has, indeed, already been applied by the Court of Appeal in another context in *Critchell* v. *Lambeth Borough Council* ([1957] 3 W.L.R. 108; [1957] 2 All E.R. 417). But it should perhaps be added that in the latter case, in which the point was more fully argued, Lord Evershed M.R. intimated that he might have reached a different conclusion, if the point had not been covered by authority.

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5. *PLANNING CASES*

By T. A. Blanco White, Barrister-at-Law

Harvey v. *Crawley Development Corporation.* [1957] 1 Q.B. 487; [1957] 2 W.L.R. 332; [1957] 1 All E.R. 504

Compulsory purchase—compensation for disturbance—costs of purchase of new house.—This was an appeal to the Court of Appeal from a decision of the Lands Tribunal, allowing as compensation for disturbance on compulsory purchase of an owner-occupied house, legal costs, surveyors' fees and travelling expenses incurred by the displaced owner in finding and purchasing a new house. The court held that this

was a matter of fact on which the Tribunal's decision could not be disturbed, but did not conceal its opinion that the Tribunal's decision was sensible. It is, after all, not unnatural for a displaced owner-occupier to buy another house to live in.

North Thames Gas Board v. *London C.C.* (1957) 8 P. & C.R. 151

Redevelopment of area—statutory undertaking—cost of laying new gas mains.—Where in consequence of the stopping-up of a highway, the mains of statutory undertakers have to be removed or abandoned, the authority responsible must pay to the statutory undertaker (under provisions of the Town and Country Planning Act, 1944, preserved in Schedule 11 to the 1947 Act) compensation for the cost of any adjustment of the undertaking rendered necessary by the removal or abandonment "as distinct from any development or project in connection with which" the stopping-up takes place. Held, by the Court of Appeal on appeal from the Lands Tribunal, that where an area was redeveloped in consequence of war damage, and roads served by gas mains ceased to exist, whereas the cost of cutting off the old gas mains was recoverable by the Gas Board from the local authority responsible, the cost of laying new mains to serve the new buildings put up in the area was not. It is not entirely clear that the position would have been the same if, instead of laying new pipes, the Board had solemnly taken up the old ones and replaced them in the new streets.

Cole v. *Somerset C.C.* [1957] 1 Q.B. 23; [1956] 3 W.L.R. 814; [1956] 3 All E.R. 531

Planning permission—permission under General Development Order—retrospective withdrawal.—The General Development Order under the Town and Country Planning Act, 1947, permits certain classes of "development" of land which would otherwise require permission from the local planning authority; but subject to power for the authority (or the Minister) to direct that this permission shall not be available in particular cases. The short point in the present case was whether a use of land lawfully begun under the General Development Order could be stopped by directing that the Order should not apply to that development. The object of the exercise was, no doubt, to deprive the landowner of the right to compensation that an order to discontinue a lawful use of land normally carries. Held by the Divisional Court, however, that the direction was ineffective once the development concerned had been carried out.

Grice v. *Dudley Corp.* [1957] 3 W.L.R. 314; [1957] 2 All E.R. 673

Compulsory purchase—notice to treat—abandonment—revival for different purpose.—This decision of Upjohn J. adds one more to the

odd collection of cases in which attempts to use compulsory purchase powers have been defeated. In 1939 a notice to treat was served under a compulsory purchase order duly made in 1937. A price was agreed, but the matter lapsed as a result of war. In 1955 the corporation, having found that the owner of the land concerned was no longer willing to accept the 1939 price, and wanting the land for other schemes, threatened to proceed under the old notice to treat. The court held, however, that the 1939 notice had been abandoned; and furthermore—a point with wider implications—that it was a bar to proceedings under the original compulsory purchase order, that the land was no longer required for the purposes mentioned in that order.

R. v. *Minister of Fuel and Power* [1957] 1 W.L.R. 861

Statutory undertaker—"operational land"—land held for future use.—This case raised a rather curious point of construction on the definition in the Town and Country Planning Act, 1947, of "operational land" of a statutory undertaker. This is defined (subject to an exception) as "land which is used for the purpose of carrying on the undertakings . . . and land in which an interest is held for that purpose." The question was whether this covered land which the undertakers intended to use operationally in the future, although they had not yet power to do so. The Divisional Court agreed with the Minister that it did; and simply on the wording it is difficult to find fault with the decision. The privileges of statutory undertakers are such, however, that the result is that whereas you cannot build a house in a Green Belt they can nearly always build a gasworks, provided they can acquire an interest in the land concerned (compulsorily or otherwise). The fault lies, however, not with the Divisional Court but with the assumption, underlying the 1947 Act, that a Government Department can do no wrong.

Norris v. *Edmonton Corp.* [1957] 3 W.L.R. 388; [1957] 2 All E.R. 801

Planning control—enforcement notice—prosecution for non-compliance—defences.—In this case, the Divisional Court decided that, when an enforcement notice is served requiring discontinuance of a use of land, the objection that the commencement of the use concerned did not involve any development of the land must be taken by way of appeal against the notice and cannot be raised as a defence to a subsequent prosecution for not complying with the notice. The highly questionable decision in *Keats* v. *London C.C.* [1954] 1 W.L.R. 1357, which rather suggests the opposite, must be overruled by the House of Lords in *East Riding C.C.* v. *Park Estate (Bridlington)* [1957] A.C. 223. The proposition that because the point could have founded an appeal against the notice it cannot be a defence to a subsequent prosecution is not to be found set out in the Act, but is a gloss on the Act added by the Divisional Court itself in *Perrins* v. *Perrins* [1951] 2 K.B. 414.

The present judgments suggest that the Divisional Court may be regretting that gloss, but having some years ago followed the example of the Court of Appeal and declared itself incapable of changing its mind the court could only suggest that Parliament clear the point up.

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6. *MISCELLANEOUS*

William Lacey (Hounslow), Ltd. v. *Davis* [1957] 1 W.L.R. 932; [1957] 2 All E.R. 712

Builder's estimate—use for war damage claim—implied contract to pay reasonable remuneration.—In this case an owner of some war-damaged premises asked the plaintiffs, a firm of builders, to tender for the reconstruction of the premises. Subsequently, the owner asked the plaintiffs to prepare estimates for the purpose of obtaining building licences and to prepare an estimate for reconstruction of the premises for the purpose of negotiating with the War Damage Commission. This last estimate was quite unrelated to any genuinely contemplated reconstruction. At all times, the plaintiffs were led to believe that they would in due course receive the contract for reconstruction, but eventually the owner sold the premises. The plaintiffs sued for reasonable remuneration for the work done. The owner's defence was that estimates are gratuitous and it is one of the normal risks of the trade if no contract to build results.

The defendant's counsel argued that if the court found for the plaintiffs, it would be granting a new charter to builders for which no authority can be found in the books. Barry J.'s reply was that "it must be borne in mind that until a comparatively short time ago, builder's estimates were useful for one purpose only, namely, to ascertain what a proposed building would cost. When licences are required for a variety of purposes and when war damage claims require to be settled, this is no longer the case. The old-fashioned purpose of an estimate may become an almost subsidiary one, and builders may be called upon to perform all kinds of services and provide all kinds of information quite unconnected with the submission of a tender. I find it difficult to think that any injustice will result if building owners, who obtain the benefit of all these services upon the understanding that a contract is to be given, should be required to make some payment for them, if they subsequently decide that the contract should be withheld." The learned judge accordingly found for the plaintiffs.

If we may say so with respect, the result is eminently just and reasonable and in accordance with the trend of the cases relating to quasi-contract. No doubt if a builder gives an estimate for the "old-fashioned purpose" and does not get the contract, he does not expect to be paid, but if the estimate is to be used for some other purpose it is reasonable to imply an obligation to pay in some form or another. If it was understood that in the event of a contract resulting the builders would not be paid for any of their estimates, it by no means follows that the builders would expect no payment if the contract did

not result. The decision in this case is in line with that of the Court of Appeal in *Brewer Street Investments* v. *Barclays Woollen Co.* [1954] 1 Q.B. 428.

Hall v. *Meyrick* [1957] 3 W.L.R. 273; [1957] 2 All E.R. 722 (C.A.)

Ashworth J.'s decision (noted *ante*, p. 248) has been reversed by the Court of Appeal.

See Conveyancer's Notebook, *ante*, p. 326.

THE LIBRARY

The Law relating to Auctioneers and Estate Agents. By D. Macintyre, m.a., Barrister-at-Law. Sweet & Maxwell Ltd. xxi, 243 and (index) 9 pp. (£1 10s.)

There is no satisfactory book on the law relating to auctioneers and estate agents. One of the difficulties facing a writer on the subject is to set limits to his subject. Is he to include revocation of the agent's authority by the insolvency or insanity of the principal? To what extent is he to deal with conversion of goods? In our view the author has omitted a certain number of points with which he should have dealt. He tells us a good deal about conversion, but never mentions that where two contradictory claims are made the agent can interplead. (Incidentally the heading "conversion" in the index gives no reference to Chapter 3 where the subject is also discussed.) Two other serious omissions are the failure to deal with the position resulting from the agent's insolvency or disappearance while in possession of the deposit and with the liability of the principal for the agent's commission on the grant of a lease. The sort of case that causes difficulty is where there is a letting, say, for six months, followed by a further letting. Would it not also be helpful to set forth the scale of one of the leading professional bodies with the accompanying rules?

Leaving aside the omissions, the author has made a thorough examination of his subject. In the preface he says that "since the book is intended for those who may not have ready access to law reports, most of the reported cases in which auctioneers and estate agents have been involved are cited in some detail and, so far as possible in chronological order, so that the development of the law under each heading may be traced." This practice has certainly made the book readable and it is undoubtedly useful to practitioners to have the cases collected with short summaries, but sometimes this practice is taken too far. There is a number of older authorities which are not likely to be of much assistance today, and there is not much point in going into the history of some aspect where the law has become quite clearly settled.

Where the law is not clear—and the Acts dealing with the conduct of auctions are far from clear—the reader is given considerable assistance by way of careful expressions of opinions. *R.* v. *Barnett* [1951] 2 K.B. 425 might have been mentioned at p. 122 on the Auctions (Bidding Agreements) Act, 1927.

In general, the author's style is clear, but occasionally he lapses into obscurities. For example, it is very difficult to follow *Re Sadler* (1881) 19 Ch.D. 86 as summarised on p. 44; on p. 48 the distinction between an undisclosed agency and an unidentified principal is not made clear; the cases on "usual covenants" in leases must surely be applied with considerable discretion to descriptions of leases in auction particulars; the summary of the Auctions (Bidding Agreements) Act, 1927, is not very lucid. These defects do not seriously affect the value of the book, which is to be recommended.

E. F. G.

The Landlord and Tenant Acts, 1927 *and* 1954 *including Business Tenancies.* 2nd ed. By Lionel A. Blundell, ll.m., and V. G. Wellings, m.a., Barristers-at-Law. Sweet & Maxwell Ltd. xxiv, 346 and (index) 18 pp. (£2 2s.)

The first edition of this book appeared at the end of 1954, just after the Landlord and Tenant Act, 1954, came into force. This second edition, which

is some hundred pages longer than the first, deals (*inter alia*) with the formidable mass of case law which has already arisen out of that Act (especially Part II thereof) down to *Addiscombe Garden Estates* v. *Crabbe* [1957] 2 All E.R. 205, decided in April of this year. The emphasis is on the law of business tenancies: but chapters are again included on the protection of long leaseholders of dwelling-houses under Part I of the Act of 1954, on the law of dilapidations, and on other parts of the law of landlord and tenant which are affected by the Acts of 1927 and 1954. It should be borne in mind, however, that at the time when the book went to press it was only possible to refer in footnotes to the Rent Bill then before Parliament, so that the chapter on Part I of the Act of 1954 must be read (as is foreshadowed on p. 104) in the light of the considerable amendments made by what is now the Rent Act, 1957.

The general scheme of the book remains the same, but the chapter on security of tenure of business and professional tenants has been largely rewritten and more than doubled in size in the light of the decided cases. Notes of these cases also appear in an extremely useful new appendix, which refers not only to cases which have found their way into the law reports, but also to county court and other cases which have only been reported in professional journals. These notes, in which many passages from judgments are cited, may well be found to be one of the most useful features of the book.

To practitioners who wish to find in one column the answers to many problems arising out of the Landlord and Tenant Acts, 1927 and 1954, together with the text of those Acts and of the relevant regulations and court rules this book is to be highly recommended. They will also find much guidance on difficult points which have not yet been resolved by the courts. Perhaps it is only fair to add, however, that subscribers to the Second Permanent Supplement to Woodfall on *Landlord and Tenant* will find the whole of this work included in that one, so that they may not wish to invest in both.

D. M.

We have also received:—

Where to Look for Your Law. 12th ed. By C. W. Ringrose, Librarian of Lincoln's Inn. Sweet & Maxwell Ltd. 190 pp. (Ordinary copy 7s. 6d.; interleaved copy 15s.)

A new edition of this index of legal textbooks arranged under subjects and authors is always welcome. There seems, however, to be a fair crop of errors: *e.g.*, Mr. Cree retired from editorship of this journal some time ago; the latest edition of *Newport* is not 1952; the heading "Tax Planning" should include Wheatcroft's *Taxation of Gifts and Settlements*; Bramall's *Guide to the Housing Repairs and Rents Act*, 1954, should appear under "Rent Restrictions," whether it appears under "Housing" or not. Some of the subject-heading and cross-referencing is poor; that from Income Tax to Sur-tax is entirely unhelpful; that from Real Property to Flats, which merely takes one back to Real Property, ludicrous. The fascinating headings, "Cabmen's Shelters" and "Cellar Dwellings," are a complete disappointment. It is difficult to know down to what date the book is intended to take the reader. The preparation of this very useful index is, no doubt, tiring work and such defects as there are are more irritating than anything else.

Law Quarterly Review Index to Volumes 1 *to* 72. By Peter Allsop, M.A., Barrister-at-Law. Stevens & Sons Ltd. 326 pp. (£2 2s.)

The peer of legal journals is entitled to its Debrett.

The Sale of Goods. By P. S. ATIYAH, B.A., B.C.L., Barrister-at-Law. Sir Isaac Pitman & Sons Ltd. xxv, 196 and (index) 10 pp. (£1 5s.)

Mr. Atiyah is writing principally for students and appears to have done a competent job. We think that the Sale of Goods Act should have been set out in full in an appendix and more consideration might have been given to export sales. When such a high proportion of such sales are either effected through confirming houses or paid by means of letters of credit, a student is rather misled if he is told practically nothing about the actual mechanics of the transactions; and he ought to be told about the duty to obtain licences: the footnote on p. 115 is quite inadequate.

The Rent Act, 1957. By R. E. MEGARRY, Q.C. The Solicitors Law Stationery Society Ltd. 39 pp. (5s.)

This booklet is a reprint with minor revisions of a series of articles published in the *Solicitors Journal* and contains a short introduction to the new Act written in the author's pleasing and distinctive style.